Department of Labour, Canada

*COMBINES INVESTIGATION ACT*

INVESTIGATION INTO

# AN ALLEGED COMBINE

IN THE DISTRIBUTION OF

# TOBACCO PRODUCTS

IN THE PROVINCE OF ALBERTA
AND ELSEWHERE IN CANADA

Report of Commissioner
August 31, 1938

OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1938

*Price, 25 cents*

# Department of Labour, Canada

*COMBINES INVESTIGATION ACT*

INVESTIGATION INTO

# AN ALLEGED COMBINE

IN THE DISTRIBUTION OF

# TOBACCO PRODUCTS

IN THE PROVINCE OF ALBERTA
AND ELSEWHERE IN CANADA

## Report of Commissioner

August 31, 1938

OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1938

OTTAWA, August 31, 1938.

Hon. NORMAN McL. ROGERS,
Minister of Labour,
Ottawa.

SIR,—I have the honour to transmit to you herewith the report of an investigation under the Combines Investigation Act into an alleged combine in the distribution of tobacco products in the province of Alberta and elsewhere in Canada.

Yours faithfully,

F. A. McGREGOR

*Commissioner, Combines Investigation Act.*

# CONTENTS



## ANNEXES

# REPORT OF THE COMMISSIONER OF THE COMBINES INVESTIGATION ACT

ON

## AN INVESTIGATION INTO AN ALLEGED COMBINE IN THE DISTRIBUTION OF TOBACCO PRODUCTS IN THE PROVINCE OF ALBERTA AND ELSEWHERE IN CANADA

An investigation under the Combines Investigation Act has been made into an alleged combine stated to be operating in connection with the wholesale distribution of tobacco products in the province of Alberta and elsewhere in Canada. An application under section eleven of the Combines Investigation Act for investigation of the alleged combine was received in February, 1938. The application was directed primarily to alleged violations of the Combines Investigation Act by the Imperial Tobacco Company of Canada and the Imperial Tobacco Sales Company of Canada both directly and through the medium of an association of tobacco wholesalers with headquarters in Edmonton, with the apparent assistance of other tobacco manufacturers. In the application and accompanying statutory declaration it was alleged that a trade combination including the Imperial Tobacco Company of Canada, Limited, Imperial Tobacco Sales Company of Canada, Limited, and wholesale distributors of tobacco products in Northern Alberta operated to the detriment of the public in substantially controlling and in preventing or lessening competition in the purchase, barter, sale and supply of tobacco products. Operations of the alleged combine in Northern Alberta were declared to have been carried on by methods including operations of an association of wholesale tobacco distributors known as the Northern Alberta Tobacco and Confectionery Jobbers' Association. Dealers selling tobacco products at less than fixed prices were alleged to be prevented from securing supplies of these goods from members of this Association or from distributors in other areas in Canada. Distributors buying direct from the manufacturer also were reported to be arbitrarily restricted in number and in methods of operation by a combination or combinations of distributors and manufacturers. The result in summary was alleged to be a substantial degree of control of the tobacco trade by the Imperial Tobacco Company of Canada, to the detriment of the public.

Hearings in the inquiry were held in the cities of Edmonton, Vancouver and Ottawa. Witnesses were examined at hearings held in Edmonton in March. Evidence of witnesses relating to matters in Alberta was heard at Vancouver. Other witnesses were examined at Ottawa in the following two months and a study was made with reference to written submissions and other records received in the course of the investigation. While the application was concerned primarily with the nature of the alleged combine and its operation in Northern Alberta, information secured with regard to similar operations in other districts is necessarily set out in the present report.

A study of price control in the distribution of tobacco products in Canada was made at the request of the Imperial Tobacco Company of Canada in 1937 by a well-known Canadian economist, Dr. C. A. Curtis of Queen's University. The results of this study are included in a treatise entitled "An Economic Analysis of Resale Price Maintenance in the Canadian Tobacco Industry." A copy has been produced by the Imperial Tobacco Company on request, and has been included in the records of this investigation. In his study Dr. Curtis has

considered the effects of resale price maintenance in the Canadian tobacco industry on the Canadian economy as a whole as well as more narrowly upon growers, manufacturers and distributors. His conclusion is that "as a price policy the practice of resale price maintenance cannot, on its economic side, be supported in the general economic interest or as an answer to unfair trade practices; it may even be of doubtful value in the long-run to most divisions of the tobacco trade and industry itself." Although it is concerned with the economics of price maintenance and not with details of the methods of maintaining prices, this study, because of its direct relevance to the subject matter of this investigation and in view of the fact that the Imperial Tobacco Company has not been found to have altered materially its policies of price control since the study was made, is attached to the present report and appears as Annex No. III.

## II. THE MANUFACTURE AND DISTRIBUTION OF TOBACCO PRODUCTS IN CANADA

In 1936 there were 95 plants engaged in the manufacture of tobacco products in Canada according to the latest annual report of the Dominion Bureau of Statistics. The number of companies is less as some companies operate more than one plant. Only 10 plants, however, manufactured cigarettes, which constitute approximately half the total value of production of the industry. Of the 95 tobacco factories, 74 were in the class with a production under $50,000 per year while the seven largest plants, in the class having a production of $1,000,000 and over, accounted for almost 87 per cent of the total production in 1936.

The total value, at the factory, of all tobacco products manufactured in 1936 was $73,259,732, of which $32,972,373 represented duties and sales taxes payable on the materials and products reported. Wage-earners employed in the factories in 1936 averaged 5,592 in number and received total wages of $3,653,706. In addition, there were 2,001 salaried employees in the industry, whose salaries amounted to $3,554,031. In 1936, of a total of 39,477,782 pounds of raw leaf used in domestic manufacture, 33,502,144 pounds, or approximately 85 per cent, were of domestic origin and only 5,975,638 pounds were from sources outside the country. The shift to domestic raw leaf in the manufacture of tobacco products in Canada has been very marked in the past decade. In 1926 when the raw leaf used in manufacturing amounted to 36,623,904 pounds Canadian-grown tobacco accounted for 19,314,543 pounds, or 52·7 per cent, and imported raw leaf for 17,309,361 pounds.

The production of cigarettes in 1936 amounted to approximately 5,600 million cigarettes with a value, including excise and sales taxes, of $43,763,029. Smoking tobacco was second in importance with a production of 20,588,645 pounds valued at $20,674,685, including excise and sales taxes. The other principal products, ranked according to value, including excise and sales taxes, were cigars, $5,282,500; chewing tobacco, $2,435,752; and snuff, $1,080,111. In contrast with the increased production of cigarettes in recent years the production of other tobacco products has declined or remained relatively stable. The production of cigars, which showed some expansion in the period prior to 1930, has recovered less rapidly from the lower levels reached during the depression. In the case of smoking tobacco the value of production has remained close to or above that reached in 1929.

Changes in the habits of the public in the use of tobacco in various forms are shown by the figures for consumption as derived from the excise returns.

QUANTITIES OF MANUFACTURED TOBACCO TAKEN OUT OF BOND FOR CONSUMPTION

| Year ended March 31 | Population of Canada | | Tobacco | Cigars | Cigarettes |
|---|---|---|---|---|---|
| | | | lbs. *(000 omitted)* | no. *(000 omitted)* | no. *(000 omitted)* |
| 1914 | 7,632,000 | ........ | 22,249 | 288,220 | 1,166,023 |
| 1921 | 8,556,000 | ........ | 19,389 | 214,262 | 2,439,832 |
| 1924 | 9,010,000 | ........ | 21,172 | 198,043 | 2,420,053 |
| 1927 | 9,451,000 | ........ | 21,590 | 175,336 | 3,334,000 |
| 1930 | 10,029,000 | ........ | 22,195 | 196,252 | 5,035,879 |
| 1931 | 10,208,000 | ........ | 22,520 | 177,842 | 5,082,315 |
| 1932 | 10,376,000 | ........ | 22,801 | 152,159 | 4,401,629 |
| 1933 | 10,506,000 | ........ | 22,816 | 122,665 | 3,728,832 |
| 1934 | 10,681,000 | ........ | 22,315 | 115,988 | 4,342,729 |
| 1935 | 10,824,000 | ........ | 22,891 | 125,520 | 4,958,251 |
| 1936 | 10,935,000 | ........ | 23,114 | 124,571 | 5,310,132 |
| 1937 | 11,028,000 | ........ | 24,123 | 123,957 | 5,855,936 |
| 1938 | 11,120,000 | ........ | 25,155 | 136,275 | 6,848,693 |

Imports of manufactured tobaccos occupy a minor position in the Canadian market and have been considerably less in recent years than in the period prior to 1930. Imports of cut tobacco, which is the principal item, were 336,455 pounds in 1927 compared with 135,011 pounds in 1937. Imports of cigarettes were recorded as only 45,649 pounds in 1927 and 9,220 pounds in 1937. Total value of imports of manufactured products in 1937 was $471,733, of which amount cut tobaccos represented $307,487.

The distribution of tobacco products proceeds generally from manufacturers to wholesalers or jobbers who in turn supply the retailers. Manufacturers also sell directly to certain retailers. According to the Merchandising Census of 1930 manufacturers made 70·3 per cent of their sales to wholesalers and 29·2 per cent direct to retailers, the remainder consisting of miscellaneous sales. The Imperial Tobacco Company of Canada has stated that of its total cigarette and cut tobacco brands, 17 per cent were estimated to be sold to retailers and 83 per cent to wholesalers in 1936, and that for 1937 these proportions were estimated to be 15 per cent and 85 per cent, respectively.

Tobacco is distributed at wholesale by jobbers dealing in tobacco and confectionery, and tobacco and groceries, and also by other wholesale trades including fruit wholesalers and drug wholesalers. In addition to the wholesale tobacco business done by strictly wholesale concerns a certain amount of jobbing of tobacco is carried on by firms which sell also to consumers. There were 264 wholesale establishments classified under the heading of Tobacco Products in the Census of 1930, but the number of wholesale firms in other trades which also carried tobacco is not shown. Of the wholesale sales of tobacco reported in the census returns approximately 60 per cent were made by tobacco wholesalers and 30 per cent by wholesale grocers. The Imperial Tobacco Company of Canada has reported that as at the end of June, 1938, and exclusive of certain outlying districts and special accounts, it was selling to 682 accounts or establishments doing a wholesale business only, 352 retail accounts with jobbing privileges, and 4,244 accounts, including chain companies, entitled to buy all tobacco lines and to sell at retail only.

It is estimated that there are approximately 60,000 retail outlets for tobacco products in Canada, which means, roughly, that two out of every five retailers make some sales of tobacco products. The retail distribution of these products is made through many kinds of business, among which the specialized tobacco store or tobacco and news-stand constitute a relatively small part of the total

number but handle a significant portion of the total sales. Sales of tobacco for these specialized dealers form the major part of their business but the proportion shades off for different trades to those businesses in which tobacco is carried merely as a convenience.

### The Imperial Tobacco Company and Other Manufacturers

The value of tobacco products manufactured by the Imperial Tobacco Company of Canada, Limited, and its subsidiary companies is approximately three-quarters of that of the entire Canadian tobacco manufacturing industry. The companies' products include cigarettes, smoking tobacco, cigars, chewing tobacco and snuff. The Imperial Tobacco Company of Canada is connected through stock ownership with the British American Tobacco Company and the Imperial Tobacco Company of Great Britain and Ireland. The Company's subsidiary and affiliated Canadian manufacturing companies include the B. Houde Company, Limited, Quebec; The Tuckett Tobacco Company, Limited, Hamilton; General Cigar Company, Limited, Montreal; Andrew Wilson and Company, Limited, Toronto; Punch Cigar Company, Limited, Toronto; and the National Tobacco Company, Limited, Montreal. The Imperial Tobacco Company of Canada distributes its products in Canada through the Imperial Tobacco Sales Company of Canada, Limited, and operates wholesale tobacco distributing companies including Scales and Roberts, Limited, Toronto; James Kirk, Limited, Hamilton; The H. Fortier Company, Limited, Montreal; and John Erzinger, Limited, Winnipeg and Saskatoon; also Imperial Leaf Tobacco Company of Canada, Limited, and Quebec Leaf Tobacco Company, Limited, handling raw tobacco leaf; and United Cigar Stores, Limited, with retail tobacco stores in principal centres from Quebec to British Columbia.

The present Imperial Tobacco Company of Canada, Limited, with head office in Montreal, was incorporated in 1912. Its issued capital stock at the end of 1937 consisted of 1,650,000 shares of preferred stock of £1 par value and 9,451,032 common shares of $5 par value, amounting to a total par value of $55,285,160. Net profits for the year 1937, exclusive of the Company's proportion of the undivided profits of its subsidiary and associated companies and after provision for income tax, totalled $6,489,082. Remuneration to the executive officers of the company, including salaried directors, amounted to $382,416 for the year 1937, and $6,388,695 was paid to shareholders by the company during the year as dividends.

The present Imperial Tobacco Company of Canada, Limited, succeeded a former company of the same name incorporated in 1908, which in turn had succeeded the American Tobacco Company of Canada, Limited. The latter company had been incorporated in 1895 with an authorized capital of one million dollars and had acquired control of certain tobacco companies operating in Canada at that time. The total consideration received for the issued capital stock of the Imperial Tobacco Company of Canada up to the present includes $14,162,727 in cash, and other assets including shares in other companies, trade marks and goodwill. Annual net profits of the company since 1930 have been as follows:—

| | |
|---|---|
| 1930 | $6,512,164 |
| 1931 | 5,914,079 |
| 1932 | 5,471,175 |
| 1933 | 5,713,359 |
| 1934 | 5,819,767 |
| 1935 | 5,843,945 |
| 1936 | 6,058,304 |
| 1937 | 6,489,082 |

In 1928 a twenty per cent common stock dividend was distributed, consisting of 1,517,032 ordinary shares of a par value of $5 each, or a total par value of $7,585,160.

The Tuckett Tobacco Company, Limited, with head office and factories at Hamilton, Ontario, manufacturing tobacco, cigars and cigarettes, has been controlled since 1930 by Imperial Tobacco Company of Canada through ownership of the common stock. Authorized and outstanding capital stock of the Tuckett company consists of common stock of $2,500,000 par value, and seven per cent preference stock of $2,000,000 par value. Dividends paid annually on the company's common stock in the fiscal years ended March 31, including bonuses, have been as follows since 1920:—

| | |
|---|---|
| 1920 to 1929 | 4% |
| 1930 and 1931 | 6% |
| 1932 | 12% |
| 1933 | 32% |
| 1934 | 12% |
| 1935 | 16% |
| 1936 | 12% |
| 1937 | 19% |
| 1938 | 15% |

Manufacturers of products including cut tobacco and cigarettes, other than Imperial Tobacco Company and its subsidiaries, are W. C. Macdonald Incorporated; Benson & Hedges (Canada), Limited; L. O. Grothe, Limited; Rock City Tobacco Company, Limited, and the Royal Canadian Tobacco Company. Included until recently among smaller tobacco manufacturers producing cigarettes was the Northern Tobacco Company, Limited, Toronto, which discontinued active operations in 1937, and Norfolk Planters, Limited, Toronto, which several months ago made an assignment for the benefit of its creditors under the Bankruptcy Act.

W. C. Macdonald, Incorporated, Montreal, a Quebec corporation chartered in 1930 to succeed the business first established in 1857 by the late Sir William C. Macdonald, manufactures an extensive line of tobacco products. Authority was granted in 1937 for reduction of the company's authorized capital from $2,000,000 to $1,000,000 by reducing the par value of the company's stock from $100 per share to $50. Authorized capital of Benson & Hedges (Canada), Limited, manufacturing cigars, cigarettes and tobacco at Montreal, consists of 200,000 shares of no par value. L. O. Grothe, Limited, Montreal, is incorporated with an authorized capital of $1,000,000, and the Rock City Tobacco Company, Limited, Quebec, with an authorized capital of $750,000. Independent cigar manufacturers not producing cigarettes and cut tobacco include H. Simon & Son, Limited, Montreal, Jose Granda, Limited, Montreal, and J. Tuero y Hermanos Company, Toronto. The total sales value of the production of all these companies and of all other Canadian manufacturers of tobacco products, exclusive of the Imperial Tobacco Company of Canada and its subsidiaries, is about one-quarter of the total of the industry.

## Prices of Cigarettes and Other Tobacco Products

Cigarettes and cut tobacco are the principal classes of manufactured tobacco products, both in quantity and value of production. Competition from imported products has a negligible effect on Canadian prices of tobacco products, in view of the high rates of customs duties applying to imports. Excise duties, at $4 per thousand cigarettes of standard sizes, account for an important part of the retail price of cigarettes, sold to consumers chiefly at a price of $10 per thousand cigarettes. Other excise duties are twenty cents per pound on cut and plug tobacco and $3 per thousand on cigars. In the case of cigars there exists also an excise tax of fifty cents per thousand cigars valued at not over $40 per thousand, with higher rates on cigars of higher value.

Since 1932, when the excise duty on cigarettes was reduced from $6 per thousand cigarettes to $4, the minimum retail price of cigarettes has been $10 per thousand or twenty-five cents per package of twenty-five cigarettes. In

1937 the lowest priced brands of cut tobacco manufactured by the Imperial Tobacco Company of Canada sold at retail prices of from $1.20 to $1.40 per pound, after reductions of from ten to twenty cents per pound in the retail prices of certain of these brands from the prices in force in 1929. Retail prices of most other best-selling brands of cut tobacco produced by this leading manufacturer were reduced by similar amounts during the period since 1929. Lowest priced types of cut tobacco produced by certain other manufacturers are available at retail prices down to or under 90 cents per pound. Over this period of years the use of Canadian-grown raw leaf in tobacco products manufactured in Canada, replacing higher priced imported leaf, has greatly increased, rising in the case of cigarettes from 34 per cent of total raw leaf used in 1929 to 80 per cent in 1936, and, in the case of total domestic tobacco manufactures, from 59 per cent in 1929 to 85 per cent in 1936.

The cost value of all imported and domestic raw leaf used by Canadian manufacturers in the production of tobacco products, together with the average cost value per pound, is recorded in the following table, based on the data given in the Census of Industry reports:—

AVERAGE VALUES OF RAW LEAF TOBACCO USED IN THE MANUFACTURE OF TOBACCO PRODUCTS

| Year | Imported Raw Leaf | | | Domestic Raw Leaf | | | Average cost per pound of imported and domestic raw leaf |
|---|---|---|---|---|---|---|---|
| | Quantity | Cost value | Cost per pound | Quantity | Cost value | Cost per pound | |
| | lb. | $ | c. | lb. | $ | c. | c. |
| 1929 | 17,673,008 | 13,554,540 | 76·7 | 25,558,632 | 7,187,803 | 28·1 | 48·0 |
| 1930 | 17,302,060 | 13,132,600 | 75·9 | 20,337,447 | 6,269,522 | 30·8 | 51·3 |
| 1931 | 14,962,754 | 11,012,067 | 73·6 | 19,006,792 | 6,274,877 | 33·0 | 50·2 |
| 1932 | 12,739,936 | 9,186,800 | 72·1 | 21,038,240 | 5,616,019 | 26·7 | 43·8 |
| 1933 | 10,924,747 | 7,671,516 | 70·2 | 23,750,100 | 6,240,649 | 26·3 | 40·1 |
| 1934 | 9,173,143 | 8,642,745 | 72·4 | 26,927,337 | 7,521,936 | 27·9 | 39·2 |
| 1935 | 7,580,315 | 5,880,453 | 77·6 | 31,348,922 | 9,305,867 | 29·7 | 39·0 |
| 1936 | 5,975,638 | 4,831,973 | 80·9 | 33,502,144 | 10,589,794 | 31·6 | 39·0 |

The average cost of raw leaf used in the manufacture of cigarettes in which, as already noted, the proportion of Canadian tobacco has been greatly increased, has been as follows according to the census reports:

AVERAGE COST VALUE PER POUND OF RAW LEAF TOBACCO (IMPORTED AND DOMESTIC) USED IN THE MANUFACTURE OF CIGARETTES

| | Cents |
|---|---|
| 1929 | 63·8 |
| 1930 | 59·3 |
| 1931 | 57·9 |
| 1932 | 53·4 |
| 1933 | 50·0 |
| 1934 | 47·7 |
| 1935 | 46·2 |
| 1936 | 44·7 |

Customs duties on imported raw leaf are 40 cents per pound on unstemmed leaf and 60 cents per pound on stemmed leaf.

Both buying and selling prices of brands of tobacco products are fixed for the various classes of distributors, and fixed gross margins of profit of distributors are therefore established. The following table shows representative gross margins of profit now set by the Imperial Tobacco Company for distributors of its products, first, in percentages of the buyers' resale price and, secondly, as percentages of the buyers' purchase price.

DEALERS' RATES OF GROSS PROFIT ON CLASSES OF IMPERIAL TOBACCO COMPANY PRODUCTS

1. Gross Margin as Percentage of Selling Price

| Class and Retail Price of Goods | Jobbers | Class "B" Retailers (Retailers with jobbing privileges) | Class "C" Retailers (Other retailers permitted to buy from manufacturer) | Retailers buying from jobbers |
|---|---|---|---|---|
| | % | % | % | % |
| Cigarettes— | | | | |
| 20 for 20 cents | 9·49 | 23·25 | 20·20 | 15·20 |
| 20 for 25 cents | 9·56 | 23·60 | 19·76 | 15·52 |
| Cigars— | | | | |
| 5 cents each | 9·00 | 23·56 | 23·56 | 16·00 |
| Cut Tobacco— | | | | |
| 10 cent, 20 cent and 60 cent pkgs | 9·50 | 24·58 | 20·83 | 16·67 |

2. Gross Margin as Percentage of Cost Price

| | | | | |
|---|---|---|---|---|
| | % | % | % | % |
| Cigarettes— | | | | |
| 20 for 20 cents | 10·49 | 30·29 | 25·31 | 17·92 |
| 20 for 25 cents | 10·58 | 30·89 | 24·63 | 18·37 |
| Cigars— | | | | |
| 5 cents each | 9·89 | 30·82 | 30·82 | 19·05 |
| Cut Tobacco— | | | | |
| 10 cent, 20 cent and 60 cent pkgs | 10·50 | 32·60 | 26·31 | 20·00 |

Class "B" accounts buy at wholesale prices and may sell both at wholesale and at retail. The percentages shown above for this type of distributor represent the gross margin between the wholesale buying price and retail selling price, and thus indicate the spread between the manufacturer's selling price and the price paid by the consumer. This spread in the case of cigarettes represents between 23 and 24 per cent of the retail price or between 30 and 31 per cent of the manufacturer's selling price.

Until 1936 all these classes of retailers buying direct from the manufacturers had bought at the same prices as wholesalers. Since the first of 1936 jobbers and retailers with jobbing privileges have bought at the same prices, while other retailers permitted to purchase direct from the manufacturer receive intermediate rates of gross profit margins as shown in the above table, amounting in the case of ordinary cigarettes to five per cent more than the margins of retailers buying from wholesalers.

In connection with the trade margins which have been shown it may be noted that popular types of tobacco products are quick-moving lines of goods, particularly so where their popularity is maintained by intensive advertising of various types. Sales by wholesalers to retailers are also assisted through direct sales promotion by manufacturers' representatives, orders thus secured being turned over to wholesalers to be filled. Manufacturers may also place window displays in retailers' stores, thereby aiding in the sale of the brands so advertised.

Prices to the trade and to consumers as set by the Imperial Tobacco Company are strictly enforced. The wholesale and retail prices similarly set by other manufacturers of tobacco products have been closely maintained, particularly since changes in manufacturers' selling practices which were developed between 1934 and 1936, in which period the Imperial Tobacco Company introduced agreements providing for the withholding of products of its manufacture from any distributor known to be deviating from the set prices of products of any tobacco manufacturer.

The average price received by the Imperial Tobacco Company of Canada for total sales of its products, including sales to its own distributors, were reported by the company to have been as follows in the case of cigarettes and cut tobaccos, both exclusive of excise and sales taxes:

| | Cut tobacco per pound | Cigarettes, per thousand cigarettes |
|---|---|---|
| 1929 | $1.06 | $3.86 |
| 1930 | 1.05 | 3.85 |
| 1931 | 1.01 | 3.66 |
| 1932 | .97 | 3.52 |
| 1933 | .94 | 3.48 |
| 1934 | .90 | 3.44 |
| 1935 | .88 | 3.43 |
| 1936 | .86 | 3.23 |
| 1937 | .85 | 3.20 |

Typical reductions in the retail prices of brands of cut tobacco since the period of relative national prosperity marked by the year 1929, when a large part of the raw leaf used in the manufacture of tobacco products was of the higher priced imported varieties, have been already noted. The brands of cigarettes marketed in largest volume sold at a fixed retail price of $12.50 per thousand prior to the reduction in excise duty in January, 1932, and have sold at a fixed price of $10 per thousand since; that is, the retail price was reduced from 25 cents to 20 cents for a package of twenty cigarettes. At the time of this change in the retail price the price received by the manufacturer for these cigarettes, after allowing for the excise tax change, was reduced by 1·12 cents per thousand cigarettes. In 1938 the price received by the manufacturer for these popular brands, after deducting excise and sales taxes, was 36 cents less per thousand than in January, 1929, in the case of sales to wholesalers, and 5½ cents less per thousand in the case of sales to direct retailers.

In the United States, where the excise duty is $3 per thousand cigarettes, brands of cigarettes retailing at half the Canadian price, or ten cents per package of twenty, have been available in recent years, while the brands which have sold in largest volume in the United States in recent years, including "Chesterfield," "Camel" and "Lucky Strike," have sold at retail prices of approximately $6.25 to $7.50 per thousand, or 12½ to 15 cents per package of twenty cigarettes.

## III. CONTROL OF TOBACCO DISTRIBUTION IN ALBERTA

In Alberta at the present time wholesale distributors of tobacco products are parties to an agreement providing for the maintenance of common wholesale prices of tobacco products, for joint refusal to sell tc retailers who might sell below retail prices as fixed by tobacco manufacturers, and for other related restrictions in connection with tobacco distribution.

After earlier association activities which were extended in scope and effectiveness over the years 1935 and 1936, these arrangements were established in substantially their present form in October, 1936, when formal agreements between jobbers' associations and their members were signed containing the following and other related provisions:—

> "the Jobber, in consideration of the benefits and advantages which will accrue to him from the activities of the Association hereby covenants and agrees with the Association and with each and every person, firm or corporation who may sign the present agreement:—
>
> 1. That he will sell tobacco products only to the recognized retail trade and only to those in the said trade who are maintaining retail prices and carrying on orderly merchandising, save that he may sell tobacco products of any Manufacturer at Jobbers Selling Prices to other Jobbers who are recognized distributors of such Manufacturer.
>
> 2. That he will not sell any tobacco products at prices less than the Jobbers' Selling Prices set out in Price Lists issued by Manufacturers from time to time.
>
> 3. That he will not grant a discount in any shape or form on any tobacco products and, without limiting the generality of the foregoing will not offer any other goods at prices or on terms which, in the opinion of the Investigating Committee hereinafter referred to, constitute an inducement to prospective purchasers of tobacco products; or offer free goods of any kind or give a discount on any goods, part of which discount might be deemed to apply to any tobacco products, and if at any time he grant a discount on other goods, tobacco products shall not be included, but shall, at all times and under all conditions, be sold at net prices with no discounts for cash or otherwise."
>
> "9. (*a*) That he hereby agrees to and approves of the appointment by the Association of an Investigating Committee with full powers to inquire into any alleged violation by the Jobber of any of the provisions of this agreement. The Jobber agrees to be bound by the decision of that Committee.
>
> (*b*) If at any time in the opinion of the majority of the Committee. he has failed to fulfill any of his undertakings herein, the Committee may recommend to the Manufacturers that they sell him only at Jobbers' Selling Prices, for such period as the Committee may deem advisable, or at the option of the Manufacturers they close his account for the same period, and he further agrees that the Manufacturers may act upon such recommendation.
>
> (*c*) In the event of any Manufacturer selling him at Jobbers' Selling Prices, he agrees that so long as such prices remain in effect he will purchase the products of such Manufacturer only from that Manufacturer.
>
> (*d*) In the event of any Manufacturer refusing to sell him, or closing his account, he agrees that so long as such restrictions remain in force, he will not purchase such Manufacturer's products from another Jobber.
>
> (*e*) He further agrees that he will not supply any Jobber (including any branch of the Jobber's own business) with any tobacco products by sale, exchange, loan or otherwise during such time as such Jobber is not purchasing tobacco products at Jobbers' Cost Prices."

In October and November, 1936, this agreement was signed by some fourteen wholesale firms and branch establishments in Edmonton handling tobacco products, and by representatives of branches of certain of the same firms at other points in Northern Alberta. The firms which signed include all companies engaged in wholesaling tobacco products in the northern part of the province of Alberta. Several of these firms, while conforming to the regulations of the

tobacco jobbers' association operating under these agreements in Northern Alberta, have neither attended its meetings nor paid membership fees. A similar association with headquarters in Calgary operates in the southern portion of Alberta, and both are affiliated in a wider combination known as the Western Canada Jobbers' Association. Reference will be made later to the origins of this form of agreement and to its application to the wholesale tobacco trade in other parts of Canada. The establishment of the Jobbers' Agreement in its present form represented the culmination of a widespread plan of organization carried out in the years 1935 and 1936 by and with the support of the Imperial Tobacco Company.

Records secured from the Imperial Tobacco Company include a memorandum prepared for another purpose by the Company's Sales Manager indicating that the Jobbers' Agreement plan was introduced into the industry by the Imperial Tobacco Company some years ago, the initiative being taken from the company's offices at Winnipeg by W. Miller, who was the senior Western representative of the Imperial Tobacco Company at that time. Its provisions were confined to the maintenance of common prices among jobbers until 1936, when it was extended to provide also means for maintaining fixed retail prices to consumers. In the earliest stages manufacturers other than the Imperial Tobacco Company took no part in this movement. At the suggestion of this company jobbers then approached other tobacco manufacturers for the purpose of inducing them to support the Agreement. An earlier company memorandum quoted in this memorandum of the Imperial Tobacco Company's Sales Manager recorded, with reference to the making of the first formal agreements of Western tobacco jobbers, the following: —

> "When complaints were made, Mr. Millar tried at first to investigate them himself but found it impracticable and told the jobbers they must look after this themselves. This was the origin of the Investigation Committee.
>
> "As to the general effect of the Agreement, Mr. Millar says that the jobbers are satisfied that it has done much to accomplish its end. Perhaps the best proof of this is that they have copied it in Ontario.
>
> "Up to the time of the making of the new Agreement, the other manufacturers had taken no part in the movement, but upon Mr. Millar pointing out to the jobbers that this was not fair to the Imperial Company, as they would lose business to the other manufacturers, the jobbers took the matter up with the Tuckett Company and the Macdonald Company and induced them to support the Agreement."

At a meeting of Western Canada wholesalers of tobacco products and representatives of tobacco manufacturers held in Regina on February 5 and 6, 1934, plans for a more rigid control of the distribution system were formally initiated. The wholesalers attending represented the Western Canada Jobbers' Association, of which Mr. Bruce Flavin, of Edmonton, was president. It was arranged that dealers buying from manufacturers be classified under three headings, (*a*) wholesalers only, (*b*) businesses with both wholesale and retail departments, and (c) retail businesses without jobbing privileges. The manufacturers undertook to reduce the number of their accounts in the third class mentioned by a fixed date in 1935 to thirty in the province of Alberta and similar reductions were to be made in other western provinces. As also recorded in the minutes of the meeting: —

> "It was agreed by the Manufacturers that in future all matters of general interest would be taken up with the Secretary of the Western Canada Jobbers' Association and that in turn, the Secretary of the Western Canada Jobbers' Association would immediately take it up with local Associations, so that uniformity of opinion and policy would be the result."

"Some Manufacturers" further stated they would be prepared to refuse to sell to "Retail Price Cutters" and that they had already so refused.

Other important meetings were held in 1935 in Alberta and in other provinces including meetings of Western and other jobbers with manufacturers in Montreal, the principal place of business of the Imperial Tobacco Company and of several other tobacco manufacturers. An extensive reclassification of lists of recognized jobbers was made in 1935 and put into effect on January 2, 1936. The new list submitted to the manufacturers by the Northern Alberta Jobbers' Association was accompanied by the following letter of Bruce Flavin, president of the association, written in December 1935: —

> "According to the agreement reached some time ago, I hereby submit a list of the jobbing accounts in the Edmonton district.
>
> "You will note that the Provincial News, Limited, and the Hudson's Bay Company Fur Trade Depot appear on this list. These accounts have jobbing privileges only in the North West Territories (meaning north of Fort McMurray but not including Fort McMurray or Waterways), it being understood by this association that the unorganized North West Territories is an open field for manufacturers as well as jobbers."

A list of Alberta tobacco jobbing accounts forwarded in the same month to manufacturers by the secretary of the Southern Alberta Jobbers' Association was covered by a letter including the following: —

> "We are enclosing list of Tobacco accounts for the Province of Alberta, which list it is our understanding, under the recent arrangement made, you will strictly adhere to, commencing January 1st, 1936.
>
> "It is our understanding that no names will be added to this list in our territory without first referring any prospective additions to us for our consideration."

With reference to restriction of the number of jobbing houses entitled to distribute tobacco products, a letter of May 9, 1936, which follows, from the Sales Manager of Imperial Tobacco Sales Company of Canada, Limited, Montreal, "To Our Wholesale Customers" throws some further light on the methods of restriction utilized: —

> "Dear Sirs, —
>
> On April 27th we received a letter from the Western Canada Jobbers' Association regarding the matter of new Jobbing Units opening up — whether Branch Houses or new Jobbing Accounts.
>
> In order to determine a definite policy, they asked us to subscribe to the following: —
>
> 'Effective immediately, that no additional accounts, branches, or depots, will be added to the Jobbers' List in Western Canada, even though the account, branch or depot be a branch of an established house on the List at another point, and whether the proposed account, branch or depot is to be located in an old prepaid point, or a proposed new prepaid point, without first referring the proposed account, branch, or depot to the Manufacturers and the local Association involved through the Western Canada Jobbers' Association for the approval of the Manufacturers, and the Jobbers.'
>
> They have brought up for discussion and a decision, a matter which has been foremost in our minds for some time past. We deem the matter of utmost importance, and are, therefore, mailing you to-day a letter outlining this Company's policy of Distribution for all Canada.
>
> Yours faithfully,
>
> IMPERIAL TOBACCO SALES COMPANY OF CANADA, LTD."

The statement described as the company's "Policy of Distribution" appeared in very general terms in a letter of the same date, containing the statement that, "If you have under consideration opening another branch, or plan to extend your present operations, we suggest you consult our provincial office before proceeding further."

The position of wholesalers denied the right to handle tobacco is illustrated in the case of Merco Wholesale, Limited, an Edmonton wholesale grocery house with invested capital owned largely by some fifty retail merchants in Alberta and Northern Saskatchewan, and with annual sales of approximately three-quarters

of a million dollars. This company carries on a regular wholesale business, distributing a general line of groceries, and also dry goods and footwear. From forty to fifty per cent of its sales are made to retailers other than shareholders and the remainder to merchants who are shareholders of the company. Before the development of the more elaborate restrictions imposed on the tobacco trade in 1936, Merco Wholesale, Limited, was able to secure tobacco products from certain other wholesalers, and at intervals from manufacturers other than Imperial Tobacco Company, in spite of the reported opposition of other wholesalers in the district. Since then the company has been unable to supply tobacco products to retailers in the course of its regular wholesale business. Questioned on this point, the managing director of the company stated:—

> "Q. You are requested on occasion to supply tobacco?—A. Oh, yes. When a new merchant comes in they ask us if we handle tobacco and they say, 'It isn't any use to deal with you then when we have to run around to get tobacco.'
>
> Q. In other words, most of the retailers want to get tobacco from you with their orders?—A. Yes."

Efforts of the company over a period of years to buy direct from the Imperial Tobacco Company have been uniformly unsuccessful. An order sent direct by Merco Wholesale, Limited, to the Imperial Tobacco Company in Montreal in April, 1937, accompanied by a certified cheque for $1,150, in payment for the goods ordered, was returned with the reply that "we have no account with you and are unable to accede to your request at this time." In the early part of 1938 a representative of Merco Wholesale was advised by one of the members of the jobbers' association that their position would be considered by the association with the view of determining whether their difficulty in this respect could be remedied, but no further results of this move were apparent than those which had followed the company's earlier efforts.

Since the first of 1936 approximately sixty wholesale houses in Alberta have been entitled to buy direct from tobacco manufacturers at wholesale prices, and two-thirds of these are branches or subsidiaries of four companies. Retailers entitled to buy all lines direct from manufacturers, thereby receiving an extra gross margin of approximately five per cent, were limited by agreement made in 1935 to thirty retailers in the province of Alberta and other fixed numbers in other provinces.

The framework of the restrictions upon wholesale and retail trade in tobacco products as arranged by the middle of 1936 can probably be best shown by reproducing the following lengthy memorandum sent to members of the Western Canada Jobbers' Association by the secretary of the Association with a covering letter stating that "Because at times Members plead ignorance to a knowledge of the various arrangements with the Manufacturers governed by the Selling Arrangements in effect, we have consolidated into one Memorandum the different arrangements agreed upon by the Manufacturers and the Association, and we are attaching hereto a copy of that Memorandum."

"CONSOLIDATION OF MEMORANDA IN EFFECT AS OF JUNE 30, 1936

A—CIGARETTES AND TOBACCO ONLY

1. *Government Institutions*

It was agreed that Manufacturers will sell only to those in the Tobacco Business reserving the right to sell to Federal and Provincial Government Institutions, i.e. Penal, Mental, Physical, and Welfare Institutions, including Military Canteens at their established Jobbers' Cost Prices, and insist on regular retail Prices being maintained. It was further agreed that Manufacturers will discontinue selling to country and Municipal Institutions as of March 1, 1935.

2. *Discontinued Lines*

It was agreed that discontinued lines must be advertised as such particularly at point of sale and that during the time required to dispose of the line, no additional quantities of the brand, size or packing be manufactured. If further quantities are

manufactured to exhaust wrapping material, Jobbers' Cost, Jobbers' Selling Price and Retail Selling Price must be established and maintained with the regular percentage of profit to Jobber and Retailer on Standard Lines. Furthermore, the brand must be advertised and referred to only at its new price.

3. *Eliminating Vending Machines*

It was agreed that Manufacturers and Jobbers would not sell Tobacco products to any dealer who is operating vending machines outside of their retail store premises.

4. *Delivering Merchandise by Salesmen*

It was agreed that except for the introduction of a new line in Jobbers' Centres only, that Manufacturers' Salesmen would not carry goods for deliveries.

5. *Direct Accounts—Cigarettes and Tobacco in Western Canada only*

It was agreed that the number of Direct Accounts in Western Canada shall be as follows: Manitoba 75; Saskatchewan 30; Alberta 30; British Columbia 75; and that each Manufacturer will supply a list of the said Direct Accounts to the Secretary of the Western Canada Jobbers' Association, and so far as it affects each Local Association, to each Local Secretary, and to keep such lists amended and up to date as changes occur.

6. *Premium Cards and Packing of Cigarettes*

(*a*) Effective December 31, 1935, discontinue packing present Premium Card Scheme.

(*b*) Effective January 1, 1936, begin packing new Premium Card Scheme (Cards to be of a different color or design so as to easily distinguish them from old series) which scheme will be matched sets of cards in numerical order, from 1 to 52 and Joker (Total of 53).

(*c*) Cards issued under this scheme will be redeemable only for Playing Cards on the basis of one deck of playing cards for two complete matched sets.

(*d*) Effective January 1, 1936, discontinue packing Premium Cards in any product other than Cigarettes, and as of that date cards packed in Cigarettes to be on the following basis:

| | |
|---|---|
| 5s | Nil |
| 10s | 1 card |
| 20s pouch | 2 cards |
| 25s | 3 cards |
| 50s | 5 cards |
| 100s | 10 cards |

(*e*) Effective June 30, 1936, discontinue (as far as additional Manufacture is concerned) all Panel Front Cash Value or any Premium Schemes other than the Card Scheme referred to in previous paragraphs, and in the interim not to apply any of these schemes to any brand on which they at present do not apply.

(*f*) Any old Premium Cards (that is, issued in 1935 or previous thereto) in circulation may be redeemed for regular premiums up to and including June 30th, 1936.

On and after that date, any of the old cards that may be sent in for redemption to be redeemed for Playing Cards only on the basis of one deck of Playing Cards for two complete matched sets.

(*g*) Effective June 30, 1936, all premium Stores to be closed and redemption on and after that date to be made in Montreal or Head Office of Manufacturer only through Mail Order Department.

(*h*) Fifty-two Cards plus one Joker (total 53 Cards) in numerical order will constitute a complete set.

(*i*) Effective forthwith no further trading boards or free Cards to be issued to the trade or otherwise.

(*j*) Effective December 31, 1935, the manufacture of sizes of packages of popular priced cigarettes to be limited to the following with one exception:

| | |
|---|---|
| 5s | 25s |
| 10s | 50s |
| 20s | 100s |

The exception referred to in the previous paragraph is that a 24s package be permitted for the Montreal Sales Tax area, thereby enabling the retailer to sell the 24s package at 25c, tax inclusive, provided that should a similar tax become effective in other areas this 24s package may be reduced by one cigarette for each 1c of tax.

(*k*) It is felt that a manufacturer is entitled to individuality in packages, furthermore, the matter of patent rights is involved. It is believed that just so long as no manufacturer will take advantage of its competitor by introducing some very expensive form of package, this item should not be insisted upon.

7. *Donations*

Effective December 31, 1935, discontinue all donations of free goods to banquet, smokers, charitable institutions, social and similar affairs and discontinue giving samples to individuals by mail or a similar type of delivery or any method other than what is known as 'catch' sampling.

8. *Packing Smoking Accessories*

Effective July 1, 1936, discontinue packing cigarette papers, pipe cleaners, or any article than the tobacco itself in all tobacco packages and tins.

9. *Classification of Accounts*

Definition—Resale prices to mean Jobbers' Selling Prices. 10% Trade Discount to mean the spread between the Jobbers' Cost Price and Selling Price.

Effective January 1, 1936, "A" and "B" accounts to be invoiced at Jobbers' Resale Prices subject to a trade discount of not less than 10%.

Effective January 1, 1936, "C" Accounts to be invoiced at Jobbers' Resale Prices subject to a discount of 5% only.

10. *General Provisions re Nos. 6, 7, 8, and 9*

That the provisions of this memorandum to be effective for a term of five years unless changes in Excise or other Taxes or other fundamental economic changes occur in which case a conference should be held for the purpose of carrying on with this arrangement with modified conditions that such changes might warrant. This memorandum is admittedly not applicable should some organization with old packings of cigarettes enter the market in a material way.

11. *Premiums—Definition*

It is understood and agreed that guessing contests, hockey and baseball score contests, prizes for jingles, silk flag inserts, historical inserts, or any other inserts except that shown in section 6, even if they have no redeemable value are to be withdrawn as of January 1, 1936.

## B—CIGARS ONLY

1. *Cigars in Jobbers' Selling Arrangement*

The Manufacturers agreed to place Cigars in the Jobbers' Selling Arrangement when requested to by Local Associations.

2. *Re: Direct Accounts (Cigars) Western Canada only*

The Manufacturers and the Western Canada Jobbers' Association agree that from the first of July, 1935, the number of direct accounts in Western Canada shall be as follows: Manitoba 150; Saskatchewan 150; Alberta 150; British Columbia 150 and that each Manufacturer will supply a list of the said direct amounts to the Secretary of the Western Canada Jobbers' Association, and so far as it affects each Local Association, to each Local Association, and to keep such a list amended and up to date as changes occur.

3. *Percentage of Profit*

The Manufacturers agree that the discount to Jobbers shall not be less than 10 per cent.

## C—CIGARETTES, TOBACCO, CIGARETTE PAPERS, AND CIGARS

1. *Special Brands*

No special prices to be quoted by Manufacturers lower than Jobbers' Cost Price, and it was also agreed that Manufacturers may continue to make Special Brands, and on such brands the percentage of profit to the Jobber and Retailer, as the case may be, is to be comparable to standard brands and the Retail Price established and maintained.

2. *Price and Size Changes*

It was agreed that Manufacturers notify their respective customers of new lines, changes in price, sizes, etc., and discontinued brands. In such notices, net price to jobbers; Jobbers' Selling Price; Price to Consumer; and date on which changes go into effect to be given. Wherever possible the change should go into effect on a Monday.

3. *New Jobbing Centres*

We have submitted as a policy for the opening of new Jobbing Centres or for the purpose of adding new names to the Jobbers' List, the following:—

> 'Effective immediately, that no additional accounts, branches, or depots will be added to the Jobbers' List in Western Canada, even though the account, branch, or depot be a branch of an established house on the list at another point, and

whether the proposed account, branch, or depot is to be located in an old prepaid point, or a proposed new prepaid point, without first referring the proposed account, branch, or depot to the Manufacturers and the Local Association involved through the Western Canada Jobbers' Association for the approval of the Manufacturers and the Jobbers.'

4. *Terms*

Manufacturers are sympathetic with the suggestion of uniform and shorter terms. It is suggested, however, that the Jobbers' Association work out this problem, especially that of uniform terms. The Manufacturers agreed to assist in this effort and when a terms clause has been adopted by a Local Association to support it as part of the Jobbers' Selling Arrangement.

5. *Direct Account Outlets*

The question of whether Direct Accounts should be counted by firms or outlets was referred back to the Local Association for another year.

6. *Re Direct Accounts*

The Manufacturers agreed to reduce the number of direct accounts (Retail) to an agreed maximum number after negotiations with the Local Association involved.

7. *Maintaining Resale Prices*

It was unanimously agreed that Manufacturers are in favour of price maintenance and will insist on Jobbers Selling Prices and Retail Prices on all Tobacco products being maintained.

8. *Returns on Christmas Goods*

It was agreed that no Jobber should be allowed to return goods to the Manufacturer without first receiving the Manufacturers' authority.

9. *Re Minimum Direct Shipments to Retailers*

The Manufacturers expressed the opinion that when accounts are reclassified and maximum number agreed upon, the question of minimum quantities would not apply.

10. *Re: Industrial Business*

The Manufacturers and Jobbers agree from February 15, 1935, to absolutely stop selling Industrial Accounts of any kind whatsoever.

11. *Cigar and Cigarette Papers, Western Canada*

The Cigar, Cigarette Paper, and Tobacco Manufacturers agreed that Cigars and Cigarette Papers are to be added to the Selling Arrangement in Western Canada as of July 1, 1935.

12. *Deals*

It is agreed that no Manufacturer of Tobacco Products shall use Deals of any kind in the merchandising of his product.

13. *Minimum Shipments*

It is agreed that where the number of Direct Accounts are limited to a specified number, minimum shipments do not apply unless specifically mentioned.

14. *Prepayment of Freight*

It was agreed that where no specific arrangements govern Local Associations for the prepayment of Freight, that Jobbers are only allowed to prepay to established prepay points and to equalize freight in competing points.

15. *Jobbers List*

It is agreed that the Jobbers' List of Western Canada will be a common list to all manufacturers and approved by each Local Association.

16. *Re: Selling Merchandise to Fairs, Carnivals, Rodeos, Circuses, etc.*

It is agreed that it will not be in order to sell merchandise to be used to be given away as prizes on Wheels of Fortune, Housey-Housey Games, etc. This applies particularly to Cigars, Cigarettes, and like products, and according to the Jobbers' Selling Arrangement on such products no other products are to be sold for similar purposes, because such sales contravene the Selling Arrangement of the Jobbers.

17. *Terms, Western Canada only*

It was agreed that a terms clause be inserted in the Selling Arrangement reading as follows:—

> 'That Cigarettes, Tobacco, Snuff, Cigars, Little Cigars, or Cigarette Papers will not be sold on terms of payment exceeding the maximum which is hereby agreed to be thirty days from date of shipment.'

The Terms Clause is now embodied in the Agreement in Western Canada with the exception of British Columbia and Manitoba."

As the foregoing bulletin makes apparent, the scope of these restrictions extends far beyond the operation of the combination within Alberta. In respect of restraints of trade in force in the distribution of tobacco products in the city of Edmonton and the province of Alberta, it may be seen from the information already set out that a combination or monopoly exists. A combination, merger, trust or monopoly, as described in the Combines Investigation Act, which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interest of the public, is defined as a "combine", and participation or knowing assistance in the formation or operation of any such combine is an indictable offence. The principal question at issue is consequently whether, in the terms of the Act, this "combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers or others". The courts throughout former cases have emphasized the generally recognized vital interest of the public in maintaining competitive conditions in trade and industry, and in thereby protecting the community from the increased cost or profit levies involved in the establishment of unregulated private monopolies or in widespread combinations in restraint of trade. With these considerations in mind a more detailed examination of operations of the alleged combine in Northern Alberta may appropriately be made.

## The Northern Alberta Tobacco Jobbers' Association

The Northern Alberta Tobacco Jobbers' Association, known prior to a reorganization made on January 21, 1938, as the Northern Alberta Tobacco and Confectionery Jobbers' Association, has operated as an unincorporated association of wholesale distributors of tobacco products, composed mainly of firms carrying on business in the city of Edmonton. The affairs of the Association are administered by a president and a secretary-treasurer, and provision is made for the appointment of an executive committee and of special investigation committees as required. Meetings of the association are held from time to time to deal with matters arising out of the enforcement of the formal association agreement, already referred to, which agreement is known as the "Jobbers' Selling Arrangement". Dues paid to the association for the year 1936 by members in the Edmonton district were $825, on the basis of $50 for each contributing wholesale establishment in the city of Edmonton and $25 for each other contributing wholesale establishment in the Northern Alberta area.

With the exception of copies of minutes of meetings of January and February, 1938, and of May 17, 1937, minutes of all meetings held by the association were reported to have been destroyed prior to the opening of the hearings held in this investigation in Edmonton in March, 1938. Mimeographed copies of minutes supplied to members, other than those of the above three dates, were also declared by a number of the recipients to have been destroyed. A copy of minutes of a meeting of the association held on January 20, 1937, was also secured at a later date from the Imperial Tobacco Company. Minutes of the meeting of May 17, 1937, include the following items: —

> "The meeting opened with a discussion of the new sized packed Cigarettes, viz.: Filter Tip Blends in 24's., manufactured by W. C. Macdonald Ltd., which appears to be contrary to the memorandum regarding sizes as published November 8th, 1936, which permits the manufacturer of Cigarettes in 5's., 10's., 20's., 25's., 50's. and 100's., with the exception of Montreal, where 24's. are permitted for the Montreal Sales Tax area, and as this appeared to be more of the manufacturers' problem than the wholesalers', the matter was left in the hands of the President, Mr. Bruce Flavin."
>
> "Standardizing of Fixed Prices was then discussed and the Secretary was instructed to issue list of standardized prices as submitted to the meeting by the committee appointed at previous meeting, to set up this list."

The list referred to indicated that domestic tobacco products were to be sold at manufacturers' list prices, and set out wholesale prices to be applied to various lines of imported tobaccos and certain other goods.

On January 21, 1938, meetings were held to dissolve the Northern Alberta Tobacco and Confectionery Jobbers' Association, and to form two new associations to be known as the Northern Alberta Tobacco Jobbers' Association and the Northern Alberta Confectionery Jobbers' Association. In the western provinces at this time other associations known as tobacco and confectionery jobbers' associations had changed their names in a similar manner, after consultation with the Imperial Tobacco Company. The minutes of the first meeting of the newly named Northern Alberta Tobacco Jobbers' Association contain the following items: —

> "The meeting was called to form an association to be known as The Northern Alberta Tobacco Jobbers' Association.
>
> Mr. Bruce Flavin was nominated for President.
>
> Mr. H. Fazackerley was nominated for Secretary-Treasurer.
>
> On motion of Messrs. McNaught and Waters, nominations were closed and the officers elected respectively.
>
> Discussion was then brought out at the meeting with reference to Vancouver Jobbers prepaying Tobacco from British Columbia into Jasper, and the Secretary was instructed to write Mr. Beverage, Secretary of the Western Canada Jobbers Association requesting that he immediately contact the Vancouver Jobbers, instructing them that they cannot prepay beyond the B.C.-Alberta boundary.
>
> The matter of violation of terms was then brought before the meeting and, under the terms of the Tobacco Agreement thirty days is the limit on which Tobacco and Tobacco products can be sold, and any extension of these terms is a violation and constitutes a breach of the agreement, and Investigation Committee was given authority to act promptly when any offenders were reported. Will all members please note this and check through on these terms, *to prevent any action being taken against them for infringement.*
>
> On Motion of Messrs. Waters and McNaught that the President of the Association have power to appoint the Investigation Committee, if and when necessary.
>
> There being no further business, the meeting adjourned."

Minutes of a subsequent meeting of the association, held on February 23, 1938, deal entirely with an application of another feature of the several methods used to bind distributors to the terms of their agreement. Under the plan to which the latter minutes refer, employees of the wholesale tobacco distributors may be called on to make a statutory declaration to the effect that they have taken no action which would constitute a breach of the jobbers' agreement. The association secretary, H. Fazackerley, was examined with reference to this system as follows in part:—

> "Q. This is a declaration taken on behalf of the jobber who is required, paragraph 3 of the printed form, to say this: 'Since January 1, 1937, I have not, either directly or indirectly, committed any act or deed which would constitute a breach by a party to the agreement, form of which is attached hereto.' Now, that conveys to me that if a complaint is made against one of your members you can require him to take a statutory declaration that he has not committed a breach of his agreement with you since a certain date?—A. Yes.
>
> Q. In other words, you put him on oath to answer a complaint and put your whole agreement in question.—A. Yes.
>
> Q. That is pretty strenuous, isn't it?—A. Well, that is what the association agreed on. They all want it.
>
> . . . . . .
>
> Q. In other words, a jobber, a member of your association, is subject to call to say under oath what he has done and if he refuses to do that he is subject to discipline?—A. Yes."

Arrangements whereby all association members would be required to make statutory declarations to this effect are recorded as follows in the minutes of the meeting of February 23, 1938:—

> "Bruce Flavin brought up the matter of Macdonalds Consolidated Limited not having signed the affidavit as requested by the Association. Mr. Maddison advised that he did not feel they could, as two accounts had been receiving something which they should not have been receiving. This has been stopped.

Mr. Maddison complained about certain accusations having been made which could not be substantiated, and mentioned one account in particular, viz: E. W. Brown of Ryley, saying that at no time, either directly or indirectly had his firm, or any of his representatives given any credit or money, or in any way cut the price to E. W. Brown, in consideration of receiving his tobacco business and that the total business only amounted to about $50 per week including groceries. When challenged by the Secretary of the Association, asking would he and his men be prepared to take an affidavit to this effect. Mr. Maddison promptly replied, 'Certainly' and also went on further to say that: Macdonalds Consolidated would be very glad to take the affidavit as from March 1 on the condition that every other member was asked to do the same.

On the motion of Messrs. McNaught and Maddison, it was agreed that each Tobacco Wholesaler be requested to take the affidavit, that they had not since March 1, 1938, either directly or indirectly, merchandized contrary to the Tobacco agreement, and that, if any wholesalers refused to sign, same be reported to the President for action.

The meeting also decided that, any house not able to take the affidavit, be taken off the list of the various Tobacco Manufacturers for a period of three months.

Meeting adjourned."

When questioned with regard to the procedure for checking reported violations of the jobbers' agreement, H. Fazackerley, the secretary, stated:—

"Now then, what would happen—to follow it through—if we found that there had been a breach of these terms, regardless of whether it is thirty days or what it is, it would be reported to the association and it would be reported to the president. He has power to appoint an investigating committee and then they would investigate that fully and then they would bring it before the association for what action the association felt would be necessary in the way of discipline to be agreed upon among themselves."

On the same point the association president, Bruce Flavin, stated:—

"Q. Would you just tell me how you handle complaints. I am a jobber, say, and I tell you that another jobber, Jones, for instance, is cutting prices—what do you do? —A. The only time that I have ever had anything like that I have always taken it in my own hands—lay the complaint right before the man.

Q. And ask him to remedy it?—A. And he has remedied it, as far as we know."

The essential operations of this Association and of similar associations of wholesalers in other districts have been founded on and largely made possible by the trade policies of the Imperial Tobacco Company of Canada which are typified by the price agreements of its sales company reviewed in Section IV of this report. Methods adopted by the Imperial Tobacco Company, its sales subsidiary and other suppliers of tobacco products in the enforcement of these agreements are outlined in the following accounts of action taken with respect to the Alberta Trading Company and the National Fruit Company, of Edmonton.

### The Alberta Trading Company Case

Enforcement in Alberta of price-fixing regulations governing the selling of tobacco products to the public is shown in practical operation in the case of the Alberta Trading Company. This firm, established in Edmonton in 1912, operates a mail order and retail grocery business, with a turnover of about $80,000 to $90,000 a year. Its principal business consists of selling general merchandise including tobacco in Northern Alberta and Northern British Columbia to customers at outlying points, represented by miners, railway section men, lumbermen, trappers and others. Assorted shipments are made to these customers as ordered, in sufficient quantities to permit economy in transportation charges.

In the latter part of August, 1937, the Alberta Trading Company issued its September mail order circular, which included several brands of tobacco in half-pound containers listed at prices from 35 cents to 69 cents. These prices were from four cents to six cents less per half-pound package than the retail

prices listed by the manufacturers of the tobacco at that time. On learning of this, H. Fazackerley, a director of H. H. Cooper, Limited, Edmonton, wholesale grocers who had been supplying the Alberta Trading Company, called on the manager of the Alberta Trading Company and informed him he would be unable to buy tobacco if he did not bring up his prices. On August 30, 1937, H. Fazackerley, as secretary of the Northern Alberta Tobacco and Confectionery Jobbers' Association, wrote to H. J. Beveridge, Saskatoon, secretary of the Western Canada Jobbers' Association, as follows:—

"Many thanks for your prompt action in giving attention to the matter of the Alberta Trading Company and the Royal Canadian Tobacco Company, and we are glad that your complete file was received by us this morning, as Mr. Haywood, of the Imperial Tobacco Company was in our office, asking what action had been taken.

We would respectfully ask you to press this matter to a satisfactory conclusion and that you have the definite assurance of the Alberta Trading Co. their practice of cutting tobacco prices has been definitely stopped. Otherwise, Mr. Haywood has intimated to us that any jobber who sells The Alberta Trading Co. or any other Retailer who is cutting the price, will immediately have his 'A' agreement cancelled. Naturally, we don't want anything like this to happen to any jobber.

Mr. Haywood is now leaving for the Peace River Country and will be back in town on Saturday, at which time he will contact the writer, and expect to have the definite assurance of the Alberta Trading Co. that everything has been satisfactorily straightened out."

With reference to this letter C. U. Haywood, of Calgary, branch manager of the Imperial Tobacco Company, wrote as follows on November 19 to J. M. O'Brien, Montreal, sales manager of the company, stating he practically had to force this issue with the association:—

"I have read with a great deal of interest, your letter of November 16th in connection with the Alberta Trading Company, and I think you will agree with me that the letter which Mr. Fazackerley wrote to Mr. Beveridge certainly bears out my statement to you that I find the H. H. Cooper Company Limited very reluctant to take any action, and in connection with this matter I had to practically force the issue with the Northern Alberta Tobacco Jobbers' Association. I was very dissatisfied with the manner in which they handled the situation up there, and so informed Mr. Flavin and Mr. Fazackerley to this effect some time ago.

Mr. Fazackerley certainly takes my name in vain in his letter to Mr. Beveridge, but as suggested, I will keep this matter confidential.

The reason that this question was taken up with the Western Canada Jobbers' Association according to information which was given to me, is that the Northern Alberta Tobacco Jobbers' Association first took up the question of the Alberta Trading Company selling Virginia Shorts at 35c with the Royal Canadian Tobacco Company, and received assurance from the Royal Canadian Tobacco Company that the Alberta Trading Company who was a direct account of the Royal Canadian Tobacco Company would receive no further goods from them. This promise, however, was not kept by the Royal Canadian Tobacco Company's western representative, Mr. Riley, and in view of this, the Northern Alberta Association then took the matter up with Mr. Beveridge, with a view to having him also bring pressure on the Royal Canadian Tobacco Company."

After H. H. Cooper, Limited, had refused to sell tobacco to the Alberta Trading Company the latter firm was able to buy for a short period from certain wholesale fruit houses in Edmonton handling tobacco products. After further action by the Imperial Tobacco Company of the type reported in the above two letters, the Imperial Tobacco Company's Alberta branch manager reported in a letter to the sales manager of the company:—

"For your information please note that the jobbers in Alberta are now refusing to sell tobaccos, etc., to the 'Alberta Trading Co.', 118th Avenue, Edmonton, Alberta. This Company has been cutting the prices on all half pound tins of tobacco. Copy of this letter is not being kept on file at this office."

The Alberta Trading Company during following months made unsuccessful efforts to buy tobacco from wholesale suppliers in Edmonton, Winnipeg and Vancouver. The W. H. Malkin Company, Limited, Vancouver, wrote as follows

to the Alberta Trading Company on October 18, 1937, in reply to the latter firm's request to be sold about two hundred dollars worth of tobacco, to be shipped from Vancouver:—

> "We are today in receipt of a letter from our representative, Mr. Forman, with reference to shipping you tobacco. We regret that at the present time we are unable to do so, as your name has been forwarded to us by the Imperial Tobacco Company as an account to whom we cannot ship. We regret very much that this should be the case and have no doubt that this matter will be settled satisfactorily in the very near future."

This situation was discussed in Vancouver by the sales manager of the Malkin Company, the British Columbia branch manager of the Imperial Tobacco Company and the vice-president of the Tuckett Tobacco Company, and as a result the sales manager of the Malkin Company wrote to the Alberta Trading Company on October 27, stating his department's previous letter required "some further explanation because the statement made therein regarding the Imperial Tobacco Company is misleading". He continued, "Our decision not to ship tobaccos to you was and is simply in line with our settled policy that we do not endeavor to compete with the Alberta Jobbers in tobacco lines, and therefore we do not wish to open any new accounts in Alberta in connection with tobaccos. We feel that we should like you to have this explanation of our position in the matter". The fact was that, prior to the Malkin Company salesman's call on the Alberta Trading Company in the regular course of his visits for orders, he had received a letter from his head office in Vancouver, dated September 29, stating that the Imperial Tobacco Company's manager at Vancouver had called with reference to shipping tobacco to the Alberta Trading Company and had asked the Malkin Company to refuse any such orders.

The Imperial Tobacco Company's Alberta manager, C. U. Haywood, reported to his head office in Montreal in December, 1937, that the Alberta Trading Company was securing tobacco supplies from another Edmonton retailer, and that steps were being taken to determine who this other retailer was and to stop his supplies. On February 4, 1938, in another letter to the sales manager of the Imperial Tobacco Company, Mr. Haywood reported, following initiative in the matter taken by the Imperial Tobacco Company, "that the Northern Alberta Tobacco Jobbers' Association has now located the retailer who is supplying the Alberta Trading Company, and the jobbers are therefore refusing to supply any more tobacco products to this retailer". Joseph Lyman, operating a retail grocery store in Edmonton, and dealing in large part with farmers, stated as a witness that he had taken quantities of potatoes from farmers for which he gave credit on their grocery accounts and in turn sold the potatoes to Edmonton wholesale fruit houses from which he received groceries as required in payment. In these grocery orders he undertook to secure additional tobacco supplies which he turned over in part to the Alberta Trading Company for cash, until stopped by being refused supplies in the same manner as the Alberta Trading Company. A summary of Mr. Lyman's evidence with regard to these credit deals is afforded by the following extract:—

> "Q. Why, Mr. Lyman, were you buying potatoes in any such quantities?—A. Because I had a demand for it.
>
> Q. From?—A. From the wholesalers to supply Government needs for relief.
>
> Q. Oh, yes, the wholesalers were able to take your supply. Were there opportunities to buy from your customers? Were the farmers urging you to buy potatoes?—A. Naturally I got them by the dozen.
>
> Q. He has something with which to buy goods, that is, potatoes, and you are giving him goods?—A. Yes, this particular man needed cash, whose cheque I have here—needs the cash to pay his rent so I promised him I would raise the money that he needs. That is a cash deal but there are numbers of other farmers who take credit or who take trade for it.
>
> Q. Meaning that there will be a credit to them in your books?—A. Yes.
>
> Q. And they will take goods in return?—A. Yes.

Q. Did you have to find a market for these potatoes?—A. Yes.

Q. And, generally speaking, you could not sell them for cash but had to take a credit in the wholesale?—A. Yes.

Q. And taking credit in the wholesale and getting goods for somebody else worked out satisfactorily for you?—A. Yes, and to finance my business.

Q. As a matter of fact, there is a surplus of potatoes and they are hard to market?—A. Yes, the farmers are coming in by the dozens. This one has a car load — that one has several sacks.

Q. They are in substantial quantities?—A. Yes."

It may be seen that by the methods which have been outlined above the enforcement of tobacco price-fixing has been extended beyond urban districts and even to purchases in pioneer areas distant from regular retail stores, while retailers unwilling to conform to the requirements of a combination as to the terms on which they should sell tobacco products are cut off from their sources of supply.

### The National Fruit Company Case

The formal operation of the system of imposing penalties upon wholesale tobacco distributors for alleged violation of the Jobbers Association Agreement is demonstrated in the action taken with regard to the National Fruit Company, Edmonton, in May, 1938. Following receipt of a letter of May 11 from the Northern Alberta Tobacco Jobbers' Association recommending that the National Fruit Company be penalized for a period of sixty days for violation of the Jobbers Selling Arrangement, Charles U. Haywood, manager in Alberta for the Imperial Tobacco Sales Company, wrote on May 13 to the National Fruit Company, Edmonton, in the following terms, cancelling its privileges of wholesaling Imperial goods: —

> "Pursuant to the last paragraph of our Agreement with you, Form 'A', dated March 24, 1937, we hereby notify you that the same Agreement is hereby terminated."

On May 13 this proposed cancellation had been reported by Mr. Haywood by telegram to the Imperial Tobacco sales manager at Montreal, and in a personal letter to him on the same day Mr. Haywood wrote: —

> "Please be advised that we received a letter from the Northern Alberta Tobacco Jobbers' Association recommending that the National Fruit Co. be penalized for a period of 60 days for violation of the jobbers selling arrangement.
>
> According to information given to me the National Fruit Co. have been selling fruit to the Central Buying Agency of the Alberta co-operative stores on condition that the National Fruit were to receive the tobacco business of the co-operative stores 100 per cent.
>
> We have accordingly written the National Fruit to-day cancelling their 'A' Agreement form."

This firm's suspension from the jobbers' list was accordingly entered in the Imperial Tobacco Company's suspension record at Montreal. Three days later Mr. Haywood received a letter of May 14 from the Northern Alberta Tobacco Jobbers' Association advising that there was an error in their previous letter of May 11, and that the penalty should have read fifteen days instead of sixty days; and on May 23 he wrote to the Imperial Tobacco Company sales manager, Mr. J. M. O'Brien, as follows: —

> "Attached please find copy of letter received from the Northern Alberta Tobacco Jobbers' Association on which we will make no comment.
>
> We are accordingly to-day forwarding 'A' Agreement to the National Fruit at Edmonton for their signature."

The copy enclosed showed the following communication from the Northern Alberta Tobacco Jobbers' Association, written after a meeting of the association held on May 19, and dated at Edmonton May 20, 1938: —

> "To: All Tobacco Manufacturers:
>
> We recommend that the National Fruit, Branch of the Consolidated Fruit Co. Ltd., Edmonton, be reinstated and their name placed on the list of 'A' accounts, at your option."

A further note of May 25 from the Calgary office of the Imperial Tobacco sales organization to the company's sales department at Montreal recorded the reinstatement of the penalized firm and its renewed undertaking to conform to the terms of the Imperial Tobacco Sales Company's price agreement for jobbers: —

> "Please note we have added to our list of 'A' accounts National Fruit Company (Branch of Consolidated Fruit Co. Ltd.), Edmonton, Alberta. This account was suspended from the active list for violation of the Agreement, and the penalty was reduced by the Northern Jobbers' Association."

It may be noted as signifying in some degree the attitude of the Imperial Tobacco Company and of the local association that the action taken in this matter by the Northern Alberta Tobacco Jobbers' Association and the Imperial Tobacco Sales Company, the most important participants in these overt acts, was taken after the hearings held in Edmonton in March and in Ottawa in April in this investigation, when representatives of these two organizations were examined as principal witnesses.

Two statutory declarations dated May 10, 1938, in the matter of the Northern Alberta Tobacco and Confectionery Jobbers Association Selling Agreement relating to tobacco had been made at the initiation of these penalty proceedings, the first by W. J. DeWilde, wholesale tobacconist at Ponoka, Alberta, and the second by J. F. Ellis of the Brown Fruit Company at Wetaskiwin. The first declaration was as follows: —

> "I, William Joseph DeWilde of the Town of Ponoka, in the Province of Alberta, wholesale tobacconist, do solemnly declare, that: —
>
> 1. That I am a member of the Northern Alberta Tobacco Jobbers Association;
> 2. That for more than fifteen years I have been selling tobacco and tobacco products to the Ponoka Cooperative Association, Limited, as a jobber or wholesaler, selling virtually one hundred per cent of their tobacco requirements during that time;
> 3. That about six weeks ago my representative, Lester H. Sayers, called at the office of the said store for the purpose of obtaining their order in the usual way.
> 4. That I am informed and verily believe that on that occasion he was informed by the buyer that the said Company would no longer buy their requirements from me as an arrangement had been effected by virtue of which they were buying through one, Smeaton, in Edmonton, and by virtue of which they would receive also concessions in the matter of prices on fruit as an inducement to buy their tobacco requirements through the said Smeaton;
> 5. That my representative was informed that the said arrangement was effected with National Fruit Company, Limited, Edmonton, Alberta."

In the second declaration it was set out that, after selling the United Farmers of Alberta Co-operative Store at Wetaskiwin practically all their tobacco products during the past eight years, Mr. Ellis was informed on or about April 1 last that other arrangements had been made with Mr. Smeaton of Edmonton, that since then the former had sold no goods to this Wetaskiwin account, and that the information he had secured was that the goods were being shipped by the National Fruit Company of Edmonton. On June 3, 1938, C. U. Haywood of the Imperial Tobacco Sales Company wrote to the secretary of the Northern Alberta Tobacco Jobbers' Association reporting the removal of the Wetaskiwin U.F.A. Co-operative Association, Limited, from the list of accounts entitled to buy cigars direct from Imperial Tobacco Sales Company of Canada.

## IV. PRICE AGREEMENTS OF IMPERIAL TOBACCO SALES COMPANY

The agreements among wholesalers as members of a tobacco jobbers' association, and the statutory declarations of the Northern Alberta Association which members or employees of each wholesale firm may be required to make as to adherence to this agreement, are subsidiary to a third form of document for the control of prices of tobacco products which appears in the agreement, referred to above, which the Imperial Tobacco Sales Company requires to be signed by each wholesaler to whom it sells. By means of the latter form of written agreement, and agreements along similar lines required from all regular distributors buying such goods from Imperial Tobacco Sales Company of Canada, Limited, the Imperial Tobacco Company formally and directly undertakes not only to enforce the selling prices which it fixes for wholesale and retail distributors of products of its own manufacture, but also to prevent dealers handling Imperial goods from selling tobacco or cigarettes made by any other manufacturer except at prices fixed by such other manufacturers or their distributors. Terms used in the Sales Company's price agreements are defined as follows:—

"(*a*) 'Goods' will mean cigarettes, tobacco (cut and plug), little cigars, cigarette papers and snuff distributed by distributors or manufacturers and 'Imperial Goods' will mean similar goods distributed by the Seller.

(*b*) 'Jobbers' Selling Prices' will mean the prices for the time being fixed by the Seller or other distributors or manufacturers at which their respective goods will be sold to Dealers and set forth in Price Lists published by the Seller or other distributors or manufacturers from time to time.

(*c*) 'Retail Prices' will mean the prices for the time being fixed by the Seller or other distributors or manufacturers at which their respective goods will be sold to consumers and set forth in Price Lists published by the Seller or other distributors or manufacturers from time to time.

(*d*) 'Dealer' will mean a store, canteen, club or other place where a stand for the sale of Goods at Retail Prices is maintained."

The ten provisions of the written agreement between the Imperial Tobacco Sales Company of Canada, Limited, the Seller, and a buyer who is a jobber dealing in such goods at wholesale only, to which the two parties "mutually covenant and agree," are: —

"1. That the purpose of this Agreement is to promote fair trade practices and to eliminate unfair cut price competition amongst Jobbers and retail Dealers.

2. That the Seller hereby appoints the Buyer as a Jobber of Imperial goods upon the conditions hereinafter set forth; such appointment to continue so long as this Agreement remains in force.

3. That the Buyer may sell Imperial Goods and Goods of other distributors or manufacturers (if permitted by them) to institutions at Jobbers' Selling Prices when such Goods are intended for free issue.

4. That the Buyer may sell at Jobbers' Selling Prices Imperial goods to Jobbers recognized by the Seller, and Goods of other distributors or manufacturers (if permitted by them) to Jobbers recognized by such distributors or manufacturers.

5. That save as hereinbefore provided the Buyer will sell Imperial Goods and Goods of other distributors or manufacturers, regardless of quantity only to Dealers and only at the respective Jobbers' Selling Prices.

6. That the Buyer will not exchange with any Jobber or Dealer any Imperial Goods for other Goods or vice versa.

7. That the Buyer will not, at any time, sell or supply Imperial Goods or Goods of other distributors or manufacturers to any Dealer who is selling or proposes to sell such Goods at prices other than the respective Retail Prices, and the Buyer undertakes promptly to notify the Seller of the name of any such Dealer.

8. That the Buyer will firmly maintain Jobbers' Selling Prices and will not sell directly or indirectly any Imperial Goods or Goods of other distributors or manufacturers at other than such prices, and will not attempt to evade the meaning or spirit of this Agreement in any way and in particular by making any allowance or rebate of any kind or by offering or promising any inducement such as money, matches, coupons, deals, free goods or any present or future bonus or discount that would directly or indirectly constitute a concession in such prices.

9. That the buyer may sell Cigars only to a Dealer or Jobber.

10. That this Agreement may be summarily terminated at any time by notice in writing given by either party to the other party."

The agreements of the Sales Company with its "Class B" accounts and "Class C" accounts are similar in effect, except that a "B" account is "a Retailer dealing in such goods both at retail and wholesale," and a "C" account is "a Retailer dealing in such goods at retail only." Cigars, which are not included as "Goods" in the "A" and "B" agreements, are so included in the "C" or direct retail agreements.

It will be seen that the definition of "Jobbers' Selling Prices" is such that by item 5 the company undertakes to prohibit the jobber, so long as this agreement is in force, from selling cigarettes, cut or plug tobacco, little cigars, cigarette papers or snuff produced by any manufacturer, except at jobbers' selling prices to dealers fixed by the manufacturer of such goods or by his distributor. Similarly, the definition of "Retail Prices" and "Dealer" are such that by item 7 of the agreement the jobber is prohibited from selling to any retailer who sells any of these classes of tobacco products produced by any manufacturer at retail prices other than retail prices fixed by the manufacturer or by the manufacturer's distributor. The jobber also undertakes promptly to notify the Imperial Tobacco Sales Company of the name of any retailer who is selling or proposes to sell such tobacco goods made by any manufacturer at prices other than fixed retail prices. These provisions appear to extend far beyond any reasonable interest which the Imperial Tobacco Company might have in the prices at which products of its own manufacture were resold to retailers and consumers. They appear to amount to a highly unwarranted regulation of the distribution of products of other manufacturers, with the effect of substantially eliminating price competition in the wholesale and retail distribution of practically all tobacco products throughout Canada, since agreements of this nature have been put into effect by this company not only in Alberta but throughout the Dominion.

The Imperial Tobacco Company's large proportion of the total sales of the industry, maintained by the company's forceful selling methods, extensive advertising and other means including restrictions upon competition indicated in this report, makes it practically impossible to carry on business successfully as a wholesale or retail tobacco dealer without the right to handle this company's products. Under the terms of these agreements, any wholesale or retail dealer handling Imperial goods is debarred from competing in price with any other wholesaler or retailer in the sale of any single type of such tobacco goods made by any manufacturer. The purpose of the agreement as stated in its first item appears therefore not to be the real purpose. Its purpose and effect in these respects would be more accurately stated if the item were to read —"That the purpose of this agreement is to eliminate price competition amongst Jobbers and retail Dealers in respect to Imperial Goods and Goods of other distributors or manufacturers."

The classification of retailers into three groups, indirect retailers, direct retailers and retailers with jobbing privileges, provides fertile ground for monopolistic discrimination and favouritism based on factors including the retailer's willingness to feature Imperial goods in preference to those of other tobacco manufacturers. Cases have been reported in this inquiry where a tobacco retailer on the Imperial Tobacco "C" or direct retail list featured

goods of other tobacco manufacturers including discontinued lines at lower prices which were approved by their manufacturer and was removed from this list, and where a retailer not on the Imperial "C" list and featuring goods of other manufacturers was promoted to the "C" list, with the understanding that he would thereafter give prominent display to Imperial Tobacco products. Retailers able to buy direct from the Imperial Tobacco Sales Company receive, as already indicated, an extra gross profit of about five per cent as compared to retailers buying from wholesalers, while retailers with jobbing privileges are entitled to buy at the same prices as wholesalers.

When questioned on reasons for direct sales by the Imperial Tobacco Company to some retailers and refusal to sell direct to others the company's vice president in charge of sales stated as follows in part:—

"Q. What is the general dividing line between retailers, we will say, who buy from Imperial Tobacco and retailers who buy from jobbers? What volume is necessary for a retailer to buy direct from Imperial?—A. There is no stated volume.

Q. Is there no approximate volume? What general rule or practice do you follow?—A. I think the only way I can answer that is to say that it is an old Spanish custom that has been in the tobacco business ever since I have had anything to do with it. A sales manager or a branch manager gets the idea that he wants to sell a certain retailer who is progressive, has a nice location or a certain volume of business. He recommends to us that he wants to sell him. Sometimes we put him on the list, sometimes we don't.

Q. Why do you put him on—if you do put him on?—A. It is very hard to say why. The system is built up over a period of years and it is a vicious circle. Say one of our competitors might open a retail account and we think that, in order to get in on the ground floor, we might have to sell him—and there you go.

Q. And the volume of Imperial and its subsidiaries in Canada represents what percentage of the business?—A. As you have asked me a figure, would it not be better if I didn't guess at it?

Q. Yes, if you can't give any rough figure?—A. Well, it varies so much—it might be so much on cigars, so much on tobacco, so much on cigarettes. As you have asked certain information and as I am under oath, I would rather get it from the information I have given you. If you want me to guess, I will try.

Q. No, I don't want you to try. It is over 75 per cent at any rate?—A. Now you are speaking of the total volume. Taking everything into account, I don't think it is over 75 per cent.

Q. Approximately?—A. Yes, I might say approximately."

In the preferred classes of retailers throughout Canada entitled to buy all lines direct from the Imperial Tobacco Sales Company there are now some 4,600 accounts. About 350 of these retailers buy at jobbers' prices and may carry on both wholesale and retail trade. The company sells to some 680 accounts in Canada as wholesalers only. Wholesale and retail accounts entitled to buy all lines direct from Imperial Tobacco Sales Company were as follows as at June 30, 1938[1]:—

| — | Wholesale only | Retailers with jobbing privileges | Retail only |
|---|---|---|---|
| Maritime Provinces | 101 | 46 | 1,406 |
| Quebec | 166 | 183 | 2,180 |
| Ontario | 221 | 84 | 457 |
| Western Provinces | 194 | 41 | 221 |
| Total | 682 | 354 | 4,264 |

In the case of cigars alone, approximately 4,140 retailers in addition to those included in the above table were permitted to buy direct from the Imperial Tobacco Sales Company. In this table separate or branch whole-

[1] Exclusive of Dominion and provincial government institutions, certain transportation companies, and two institutes for the blind.

sale establishments are listed as separate accounts. The opposite applies to the record of firms selling only at retail, principal chain retail companies being classed as single accounts in each province or district. In contrast to these preferred direct accounts it is estimated that ordinary retailers of tobacco products, buying from jobbers, number between 50,000 and 60,000. In some cases retail firms not permitted to buy direct from the Imperial Company do a considerably greater volume of business in tobacco products than other firms which are allowed to buy direct.

When written price agreements between the Imperial Tobacco Sales Company of Canada and wholesalers and retailers of tobacco products were first introduced in 1934, these agreements were even more comprehensive and drastic than now. The company then undertook also to require wholesalers of its products to secure a similar signed agreement from every retail dealer buying Imperial tobacco products from jobbers. This more cumbersome plan was first adopted by the company in the province of Quebec and efforts were made to introduce it into other provinces. These original agreements aroused such opposition in the wholesale and retail trade and elsewhere that they were finally revised to their present form. The original Form " D " agreement, for retail dealers buying from jobbers, included, in addition to requirements along the same lines as those now imposed upon direct retailers, the following:—

> "If at any time, any Imperial Goods in the possession of the Dealer are, in the opinion of the Distributor's representative, in a damaged, deteriorated or unsaleable condition, such goods shall, at the request of the Distributor, be forthwith delivered to it. The Distributor [Imperial Tobacco Sales Company of Canada Limited] will allow the Dealer the fair net value, as determined by the Distributor, of any goods delivered to the Distributor under the provisions of this paragraph.
>
> 8. On the termination of this Agreement the Dealer shall, at the request of the Distributor, deliver to or to the order of the Distributor all Imperial Goods then unsold in the possession of the Dealer. If, in the opinion of the Distributor, the goods so delivered are in a saleable condition the Distributor shall pay the Dealer an amount equal to the total price of such goods based on the then current Jobbers' Selling Prices, together with transportation charges, if any, but if such goods are, in the opinion of the Distributor, in a damaged, deteriorated or unsaleable condition the Distributor will allow the Dealer the fair net value of such goods as determined by the Distributor.
>
> 9. The decision of the Distributor as to the fair net value of any goods delivered to it as aforesaid shall be final and binding upon the Dealer.
>
> 10. This Agreement may be summarily terminated at any time by notice in writing given by either party to the other party except as concerns the rights of either party in connection with acts, matters or things done, committed, omitted or suffered by either party before such termination."

Provisions similar to these appeared in the Company's original forms of "A", "B", and "C" agreements, for jobbers, jobber-retailers, and retailers buying direct from the Sales Company, respectively. Under the title "Sales by Seller to Buyer" all wholesale and retail firms buying from the Imperial Tobacco Sales Company under these agreements were required to agree further:—

> "(*a*) That so long as this Agreement remains in force and subject to the provisions hereinafter in this Clause 2 contained, the Seller [Imperial Tobacco Sales Company of Canada, Limited] will sell to the Buyer, at Net List Prices, such quantities of Imperial Goods as the Buyer may, from time to time, order.
>
> (*b*) That notwithstanding anything herein contained the Seller shall be under no obligation to fill all or any orders for Imperial Goods received from the Buyer, and the Seller may, in all cases, accept or refuse any order in its absolute discretion.
>
> (*c*) That the Seller shall be under no liability for failure or inability to supply Imperial Goods to the Buyer or for any delay in shipment of such goods.
>
> (*d*) That no order received by the Seller from the Buyer shall be deemed to have been accepted by the Seller until the goods covered by such order shall have been actually shipped by the Seller.
>
> (*e*) That the Buyer shall be active in the sale of Imperial Goods required by consumers and dealers, and subject to the terms of this Agreement shall fill and satisfy promptly and properly orders received and consumer demand for such goods."

In spite of the Imperial's disclaimers of liability to its customers under the above clause, such buyers were also required to agree, under the heading, "Stock of Goods", etcetera, to the following provisions as they might be applicable to them:—

"(*a*) That the Buyer shall at all times carry a representative assortment of Imperial Goods sufficient to enable the Buyer to supply promptly consumer demand and to fill promptly orders for same which he may receive in the regular way from dealers or which may be sent or handed to him by the Seller or Seller's representatives. Orders sent or handed to the Buyer by the Seller or Seller's representatives shall be filled by the Buyer exactly as received. If any such orders are not filled by the Buyer, the Seller shall be notified forthwith and the unfilled order or orders returned to the Seller with a statement of the Buyer's reasons for their non-fulfilment.

* * * *

(*f*) That the Buyer shall permit any representative of the Seller at any time during business hours to examine the Buyer's stock of Imperial Goods and to do any work necessary in the opinion of such representative in connection with same."

Other provisions of these agreements of 1934 which were applicable to wholesalers or direct retailers as the case might be, follow, and tell their own further story of these arbitrary requirements:—

"Price Lists:—

(*a*) That the Seller may make such changes in the Net List Prices, Jobbers' Selling Prices, and Retail Prices of Imperial Goods as it may deem advisable at any time with or without notice. Such changes may be made only by the Seller and on making any and every such change the Seller will supply to the Buyer new prices which shall be binding on the Buyer for all purposes of this Agreement.

(*b*) That any tobacco Price List issued to Dealers by the Buyer shall include the full line of Imperial Goods at Jobbers' Selling Prices current at the time of issue and that copies of such Buyer's Price List will be furnished by the Buyer to the Seller promptly upon issue.

(*c*) That the Buyer will return to the Seller forthwith on demand by the Seller, the Buyer's copy of this Agreement, and also all Price Lists, Dealers' Agreements (Form 'D'), or other documents in Buyer's possession relating to Imperial Goods, such Agreements, Price Lists and other documents always being and remaining the property of the Seller.

Settlement of Account:—

That the Buyer shall settle his account with the Seller promptly when due and in accordance with the terms of the Seller. Failure on the part of the Buyer to make such settlement shall constitute a breach of this Agreement.

Statutory Declarations:—

That the Buyer shall, at the request of the Seller, promptly furnish the Seller (*a*) with a statement covering the details of any sale or sales of Imperial Goods made by the Buyer; and (*b*) with an undertaking on the part of the Buyer that he will rigidly adhere and to carry out the prices, terms and conditions of this Agreement and that he will obtain from his employees a similar undertaking to this effect before such employees sell or offer for sale Imperial Goods. Any such statement or undertaking shall be furnished when required by the Buyer to the Seller, by way of Statutory Declaration, being in effect an affidavit, and shall be made by such member of the Buyer's firm (or Company officer if the Buyer be a limited company) or by such traveller or other person in the Buyer's employ as may be designated by the Seller and such Statutory Declaration shall be in whatever form the Seller may require.

Breach of Agreement:—

That failure on the part of the Buyer to fulfill any condition herein contained shall be considered as a breach of this Agreement."

After a reading of the foregoing conditions which the Imperial Tobacco organization in 1934 sought to impose upon the trade, the terms of the present selling agreements of the Imperial Tobacco Sales Company may seem to be stipulations largely in the interests of the trade as well as the interests of the Imperial Tobacco Company. When the latter agreements, however, are viewed as they now stand it will be seen that while in the letter of the agreements they are somewhat less burdensome to the wholesale and retail trade itself, they are

equally effective in their essential features of fixing prices to dealers and consumers and in assisting in the maintenance of the monopolistic position of the Imperial Tobacco Company. When the trading position of a corporate organization supplying three-quarters of the Canadian tobacco market is buttressed by a sweeping agreement respecting not only its own products but those of other manufacturers as well, with penalties involving the cutting off of supplies of Imperial goods for breaches of the agreement, it is clear that the distributor, either jobber or retailer, has little option but to conform to the trading policies of the dominant company.

In the light of the information already summarized in this report, the chief purposes and results of the combination established and developed from 1934 up to the present time in the province of Alberta, as in other areas, may now be stated to be briefly the substantial elimination of price competition in the wholesale distribution of tobacco products, restrictions as to the number of firms entitled to buy tobacco products from the manufacturers, and an extension of the former degree of control exercised by the Imperial Tobacco Company over broad features of the entire system of distribution of tobacco products, including the enforcement of fixed prices to be charged by retailers to consumers.

# V. TRADE COMBINATIONS IN THE SALE OF TOBACCO PRODUCTS

The system of jobbers association agreements originally introduced in Western Canada under the sponsorship of the Imperial Tobacco Company was subsequently established in a similar manner in Eastern Canada, when an earlier form of "Jobbers' Selling Arrangement" was put into force in Ontario in 1926. In 1934, with and under the impetus of the Imperial Tobacco Company's campaign to assert its leadership in trade policies and establish direct price agreements with all firms selling its products, the foundation was laid for a substantially uniform application of a program of price-fixing and trade restrictions which now extends to all provinces in Canada. A wholesale tobacco distributors' association in the province of Quebec was reorganized in 1934, during which year the Imperial Tobacco Company expended $3,500 to assist in defraying expenses of this association. In February, 1935, a meeting of a number of wholesale tobacco distributors from principal cities throughout Canada was held in Montreal with representatives of the principal tobacco manufacturers. One outcome of this meeting was the establishment of wholesale tobacco distributors' associations in the Maritime Provinces and Eastern Quebec.

"Independent" tobacco manufacturers, generally speaking, lacked the financial resources and the thoroughly established position in the trade possessed by the Imperial Tobacco Company which would have enabled them to effectively resist the trend of the trade restrictions established over this period. W. C. Macdonald, Inc., as the largest manufacturer outside of the Imperial companies, made strenuous efforts to retain their fully independent position and the right to sell at competitive prices and terms of sale. In the spring of 1935 the Macdonald company reduced the retail price of cigarettes in Western Canada in offering two brands in packages containing twenty-one cigarettes instead of the usual twenty, without extra cost per package to the consumer and with an extra gross profit of 6·4 per cent per package for retail distributors. Again in the summer of 1935 in the province of Quebec the Macdonald company made a further reduction in consumers' prices in offering a leading brand of its cigarettes at twelve for ten cents instead of the usual ten for ten cents. The Imperial Tobacco Company advised the trade that if it had to meet this competition it would reduce the profit margins of wholesalers and retailers, and a delegation of wholesalers from Western Canada and elsewhere met in Montreal in August and, in interviews with the Macdonald company and other manufacturers, objected to the company's price reduction. The organized opposition to this move was accompanied by the introduction by the Macdonald company of a similarly priced brand in Ontario at twenty-four cigarettes for twenty cents, with an extra profit margin per package to the retail distributors. Other manufacturers stated they would find it necessary to follow the course proposed by the Imperial Tobacco Company. Further meetings of manufacturers and representatives of jobbers' associations were held in Montreal from November 4 to 8, 1935. The outcome of this heavy pressure was a tardy but fairly effective conformity by the Macdonald company with the provisions of a common policy for the principal tobacco manufacturers. This policy was set out in a memorandum dated November 8, 1935.

The tobacco jobbers' associations now consisted of thirteen associations or branch associations, covering the following districts: British Columbia, Northern and Southern Alberta, Northern and Southern Saskatchewan, Manitoba,

Ontario, including Northwestern Ontario, Eastern and Western Quebec and, in three branches, the Maritime Provinces. It is of interest to note that, following the arrangements reached in Montreal in November, 1935, a copy of the memorandum of November 8, prepared without title, signature or any other identification except its date, was mailed later in the same month by each of these associations to tobacco manufacturers with a covering one-sentence letter reading to the effect of " Enclosed you will find memorandum dated November 8, 1935, for your information " or " Enclosed you will find memorandum dated November 8, 1935, for your information and guidance." The "Memorandum of November 8, 1935," after provisions for the elimination of all premium cards and premiums by June 30, 1936, except premium cards in cigarettes to be redeemed for playing cards on a limited basis only, and provision for the discontinuance of " all donations of free goods to banquets, smokers, charitable institutions, social and similar affairs," read as follows:—

> " Effective July 1, 1936, discontinue packing cigarette papers, pipe cleaners, or any article other than the tobacco itself in all tobacco packages and tins.
>
> Effective December 31, 1935, the manufacture of sizes of packages of popular priced cigarettes to be limited to the following, with one exception:—
>
> 5s, 10s, 20s (Pouch Packing only), 25s, 50s, 100s.
>
> The exception referred to in the previous paragraph is that a 24s package be permitted for the Montreal Sales Tax area, thereby enabling the retailer to sell the 24s package at 25 cents tax inclusive, provided that should a similar tax become effective in other areas this 24s package may be used, and further provided that in areas where the tax may be greater than 1 cent per package the number of cigarettes per package may be reduced by one cigarette for each 1 cent of tax.
>
> It is felt that a manufacturer is entitled to individuality in packages; furthermore, the matter of patent rights is involved. It is believed that just so long as no manufacturer will take advantage of its competitor by introducing some very expensive form of package, this item should not be insisted upon.
>
> Classification of Accounts:—
>
> Definition.—Resale Prices to mean Jobber's Selling Prices.
>
> Ten per cent Trade Discount to mean the spread between the Jobber's Cost Price and Selling Price.
>
> Effective January 1, 1936, 'A' and 'B' accounts to be invoiced at Jobber's Resale Prices subject to a Trade Discount of not less than 10 per cent.
>
> Effective January 1, 1936, 'C' accounts to be invoiced at Jobber's Resale Prices subject to a Discount of 5 per cent only.
>
> That the provisions of this memorandum to be effective for a term of five years unless changes in Excise or other taxes or other fundamental economic changes occur in which case a Conference should be held for the purposes of carrying on with this arrangement with modified conditions that such changes might warrant. This memorandum is admittedly not applicable should some organization with odd packings of cigarettes enter the market in a material way."

This important agreement covered the classification of the manufacturers' customers into two main price groups, and the practical elimination of the price concession to consumers involved in the premium systems whereby premium cards packed with tobacco products had been redeemable in sets for various articles, and the standardization of sizes of packages of popular priced cigarettes, thereby providing for closer uniformity in their prices to the public. This agreement was followed by a reorganization of the pricing system of leading manufacturers in 1936, under which cut tobaccos, other than those of the Macdonald company, were priced to the trade on the basis of a dozen packages of tobacco rather than per pound, and scales of discounts off selling prices were set for each of the several classes of tobacco products and each of the four classes of distributors.

The final main step in establishing the form of the western and eastern district jobbers' associations, aside from more or less minor refinements and adjustments since, was taken at a meeting of representatives of tobacco jobbers'

associations, held in Montreal from September 14 to 18, 1936. The principal and final item of the brief and circumspectly worded minutes of this meeting is as follows:—

"4. MERCHANDISING POLICY.

The new Jobbers' Selling Arrangement and Rules and Regulations were discussed and approved and a statement of what the Meeting understands to be the Merchandising Policy of Manufacturers was adopted, and the Secretary was instructed to send a copy to each Manufacturer."

In a letter dated September 22 to the secretary of each district jobbers' association transmitting a copy of these minutes, H. J. Beveridge, as secretary, stated:—

"Attached to the Minutes is a copy of the standard form of Jobbers' Selling Arrangement, Rules and Regulations, Statement of Policy and a Summary thereof. The Meeting decided that only the Delegates attending the Meeting and the Secretaries should receive a copy of the Statement of Policy, but that all recognized Jobbers would be given a Summary of it, together with Jobbers Selling Arrangement, Rules and Regulations, and a copy of the Minutes.

The Jobbers' Selling Arrangement and Rules and Regulations were approved by all Delegates to the National Meeting and it was understood that all local Associations would hold Meetings at the earliest possible moment to put these forms into effect. In view of the fact that one of the objects of the new form of Jobbers' Selling Arrangement is to have a uniform policy in respect of price maintenance and orderly merchandising throughout Canada, it was understood that no change whatever in the forms as submitted should be made by local Associations, with the exception that any Association which does not wish to have cigars covered by the Jobbers' Selling Arrangement may delete the word 'Cigars' from the definition of tobacco products."

Leading up to this national meeting, a conference of the sales manager of the Imperial Tobacco Company with the president and secretary of the Western Canada Jobbers' Association was held in Saskatoon, and telegrams were sent by the secretary of the Western Canada Jobbers' Association on August 20, 1936, to the secretaries of the district tobacco jobbers' associations, reading as follows in part:—

"The time has now elapsed for the completion of all the arrangements agreed to amongst ourselves and with the Manufacturers over the period of the last three years. There are still matter to be dealt with arising out of those Memorandums. There is a strong feeling that a new Jobbers' Selling Arrangement should be prepared, and a Memorandum coupled with the agreement applicable to all of Canada, and in addition there are other problems of National character to be dealt with and embodied in the new Memorandum. Therefore, it is suggested that a meeting representative of all of Canada be held in Montreal beginning September 14, 1936."

This initial step was followed by a letter of August 25, 1936, from Mr. Beveridge of the Western Canada Jobbers' Association to Mr. O'Brien in care of the Imperial Tobacco Sales Company at Calgary, as follows:—

"I am enclosing herewith a draft of a new Agreement Form; a draft of the Memorandum, which you will note I have set up as one Memorandum for both the Wholesalers and the Manufacturers. My reason for drafting it this way was because of the amount of repetition there would be in preparing two separate memorandums. I am also enclosing a draft of the set-up for a National Organization, together with a very rough draft of the cost of setting up and maintaining a central office. I thought you would like to have this to check over while you were on your way here."

Further revision of drafts of this agreement and adoption of the final draft at the Montreal meeting was followed by a letter of E. C. Wood, of the Imperial Tobacco Company, Montreal, written to Mr. Beveridge on October 1, 1936, and including the following:—

"The object of this note is to let you know that if there is anything we can do here to help you carry your work out to a conclusion, do not hesitate to call on us. It is understood you will send me a printer's proof of the Jobbers' Selling Arrangement,

and I will either telegraph or telephone you should I wish to make any suggestions before it goes to press. If you will get this proof off to me right away, there will be absolutely no delay."

In Mr. Beveridge's reply, dated October 5, he stated:—

"I am enclosing herewith printers proof of the Jobbers' Selling Arrangement. . . . Advise me immediately after checking up, so that I can have the printed forms, together with the Minutes of the Meeting, and the Rules and Regulations, and the Summary of Policy of Manufacturers forwarded to each Local Association in the quantities set out in the list enclosed, the same day as your approval is received."

In confirming oral instructions for final revision of the Agreement Mr. Wood wrote as follows to Mr. Beveridge under date of October 8, 1936:—

"Further to your letter of the 5th inst., this will confirm our telephone conversation of to-day, whereby I gave you certain typographical corrections to be made on the Jobbers' Selling Arrangement final proof. Attached is proof corrected as per our conversation. I understand that this will be printed immediately and forwarded to the various Associations by the end of this week."

The amended "Jobbers' Selling Arrangement," adopted as indicated and now in force in Alberta and in other provinces, was featured by the inclusion of an association agreement not to sell to retailers who failed to maintain fixed prices of tobacco products to consumers. The importance of this last move to close off more effectively the possibilities of price competition among distributors in the sale of tobacco goods to the public has already been indicated and need not be further elaborated here. The list of rules and regulations approved at the same meeting was prefaced by a statement that "In accordance with clause 10, the following rules and regulations have been approved by the National Meeting of Jobbers' Associations of Canada, and become part of the Jobbers' Selling Arrangement." Included in the "Rules and Regulations" are the following:—

"1. That the attached summary of the individual statement of the policy of each Manufacturer to the National Meeting of Jobbers' Associations is hereby accepted, approved, and incorporated as part of the rules and regulations.

8. DONATIONS—

That Jobbers shall not make a donation of any kind of tobacco products.

9. CUSTOMERS—

That Jobbers shall not sell tobacco products to any customer who does not maintain the Retail Selling Prices as set out by each Manufacturer from time to time or as defined under the heading of Retail Price Cutting in the Jobbers' Selling Arrangement.

10. IMPORTED LINES OF TOBACCO PRODUCTS—

That Jobbers shall handle imported lines of tobacco products in exactly the same manner as defined in the Jobbers' Selling Arrangement and the summary of the policy of the Manufacturers for tobacco products."

The Rules also limited the sale of tobacco products by wholesalers to retailers from truck warehouses, defined as "Any conveyance carrying a stock of tobacco products for sale and delivery from the said conveyance to the retailer at the retailer's place of business at the time of sale." As adopted at the meeting, the Rules prohibited the jobbers from selling to retailers from "travelling truck warehouses" in Alberta, Saskatchewan, Manitoba and north-western Ontario; and permitted such sales in the remaining provinces, with the proviso that in the latter areas, except the province of Quebec, each such truck proposed to be added to the existing number should be treated by the manufacturers as though it were a new branch jobbing establishment. Later proposals to eliminate a number of jobbing trucks in the province of Quebec

were withdrawn recently. Amendments for the elimination of such jobbing trucks in Ontario in 1937 provided for their elimination in and west of Peterborough by the end of 1937 and east of Peterborough by the end of April, 1938.

The "Statement of Policy," and "Summary of Policy of Manufacturers" referred to above as incorporated as part of the "Rules and Regulations" and thereby as becoming part of the "Jobbers' Selling Arrangement," correspond in contents generally to the Western Canada Jobbers' Association's "Consolidation of Memoranda in Effect as of June 30, 1936," which has already been quoted in full. Additional provisions and adjustments shown in the "Statement of Policy" include the following:—

> "For prompt payment (not to exceed 15 days from date of shipment) a maximum discount of 1 per cent may be allowed 'C' accounts."
>
> "Before adding any new Jobbers or branches of a recognized Jobber to classifications 'A' or 'B' we will consult with the Jobbers' Association."
>
> "ASSOCIATIONS—
>
> We recognize the following Jobbers' Associations and approve of their price maintenance and orderly merchandising policy:—
>
> The Western Canada Jobbers' Association, comprising:—
>
> The B.C. Tobacco & Candy Jobbers' Association;
> The Edmonton Confectionery & Tobacco Jobbers' Association;
> The Southern Alberta Confectionery & Tobacco Jobbers' Association;
> The Northern Saskatchewan Tobacco Jobbers' Association;
> The Southern Saskatchewan Tobacco Jobbers' Association;
> The Manitoba Tobacco Jobbers' Association;
> The Twin Cities Tobacco & Confectionery Jobbers' Association.
>
> The Ontario Wholesale Tobacco Distributors' Association.
> The Province of Quebec Wholesale Tobacco Distributors' Association.
> Association des Marchands de Tabac en Gros Districts de Québec et Lévis.
> Maritime Wholesale Tobacco Distributors' Association comprising:—
>
> New Brunswick and Prince Edward Island Division;
> Nova Scotia Division;
> Cape Breton Division.
>
> Our policy as outlined herein will not be altered without first consulting with the Jobbers' Associations interested."

Under the largely standardized form and operating methods of these associations, policies meeting with the approval of the Imperial Tobacco Company and adopted as already outlined, have been enforced with the co-operation of the wholesalers' associations. Wholesalers in turn received the benefits of restrictions upon the entry of newcomers into the business and of the elimination of a number of wholesale buyers in the reclassification of accounts which was effected in 1935 and 1936. The tobacco dealers deprived of their former right to purchase at wholesale prices were, of course, excluded from these monopolistic compensations in being classified as retailers only.

In dealing with a plan for the formation of a National Association of Tobacco Wholesalers, which by this time had received exhaustive study and preparation and which was still under consideration up to the commencement of this investigation, Mr. J. M. O'Brien, sales manager of the Imperial Tobacco Company, referred to wholesalers' benefits from the present combination in a letter of December 9, 1936, to the Secretary of the Western Canada Jobbers' Association including the following:—

> "If you are not successful with the National organization, I do not believe you are going to be any more successful with the Western Canada Association, not because Mr. Millar and yourself have not done your utmost to make the Western Jobbers realize the value of a Western Association, but because of the indifference on the part of the local units. I happen to know there is opposition against both, and it is not any stronger against the National than it is against the Western Canada. I want to say this, however, that I am, if could be, more than ever behind the idea of a National organization. I do not seem to be able to get anywhere with local units.

Business is good, and price maintenance conditions, thanks to our Company, are so satisfactory that a great number of jobbers feel all the work has been done and all they have to do from now on is simply 'cash in.'

I bring one point to the attention of the local Association here, and another there, and so it goes, but regret to state that very little, if any, action is ever taken to see that matters are properly settled."

In addition to the removal of buyers from the wholesale list, a substantial number of Imperial Tobacco Company customers have been penalized and disciplined by temporary withdrawal of their right to purchase tobacco as already illustrated in the case of the National Fruit Company, Edmonton. In further illustration of this procedure one letter from the secretary of the Province of Quebec Wholesale Tobacco Distributors' Association to tobacco manufacturers in 1936 may be cited, in which he stated that a Montreal jobber, at a meeting of the executive committee of the association, had been "found guilty of supplying a price cutter and card giver." As this was the third time this wholesaler had been before the committee

"the Committee felt that they were unable to cope with this type of jobbing, as we get the same story each time, of sickness, poverty and other disturbance over which we have no jurisdiction and we would ask that the Manufacturers would take individual action in this case."

The advantages to the Imperial Tobacco Company in restriction of the number of distributors entitled to buy from the manufacturers are reasonably apparent, when it is realized that the company relies on these selected distributors for a substantial part of the execution of its price-fixing policies. The ordinary individual distributor buying from the Imperial Tobacco Company must conduct his business, in so far as tobacco prices are concerned, on the basis of rules laid down in his written agreement with the Imperial Company. The injury to the majority of efficient distributors and to the general public from a system which deprives consumers of price reductions arising from price competition among distributors on the basis of ordinary differences and improvements in operating efficiencies is equally evident. This is particularly the case when coupled with an elaborately organized program which severely restricts the opportunities of independent manufacturers for building up their business by establishing lower prices to the public on such goods as cigarettes of their own manufacture, in such price competition as they might otherwise be able to offer to a company manufacturing the greater part of the goods supplied by the entire tobacco manufacturing industry.

## VI. CONCLUSION

It has been shown in the present report that through a series of agreements in the tobacco trade which have been developed by and under the dominating influence of the Imperial Tobacco Company of Canada, price competition among wholesale and retail distributors with respect to the sale of principal classes of tobacco products throughout Canada has been almost completely eliminated. Practices leading to the substantial control of distributors' prices, methods of distribution and the right to engage in the business of wholesale distribution of tobacco products have been built up in the past three or more years to distinctly monopolistic proportions under the guiding influence of this company with the assistance of associations of wholesale tobacco distributors. Other principal tobacco manufacturers have conformed to the main requirements of this system, and have been subjected to strong trade pressure on occasions when they have attempted to adopt a more independent policy of distribution or substantially reduce prices to the public without the approval of the combination.

The chief method by which this control of trade policies has been formally established is that of the written agreements under which the Imperial Tobacco Sales Company requires its customers to sell products of the Imperial Tobacco Company and those of other tobacco manufacturers at prices fixed by each of the several manufacturers, and agreements of wholesalers' associations to adhere to selling prices fixed by manufacturers and to refuse to sell tobacco products to any retailers who might sell the same for less than similarly fixed prices to consumers. Through price discrimination of an undesirable nature and not based on the volume of dealers' purchases, certain numbers of retailers, limited by agreement, are permitted to buy direct from manufacturers, while all other retailers may purchase only at higher prices from wholesale distributors. Entry into the wholesale business by firms whose possible entry is viewed with disfavour by the leading manufacturer and by existing district wholesalers has become increasingly difficult. Any other manufacturer of tobacco products must now conform closely to the policies written into the jobbers' association regulations if his hopes for distribution of his products on any substantial scale are to be realized. By these and related methods which have been set out in this report the degree of monopoly control attaching to the manufacture and sale by one company and its subsidiaries of approximately three-quarters of the country's supply of tobacco products has been enhanced to a point which has permitted high prices and the exaction of large profits at the expense of the public.

The marked increase in recent years in the use of Canadian raw leaf in the manufacture of tobacco products in Canada, with a much lower cost than that of imported leaf, has been accompanied by only a very gradual decrease in manufacturers' average selling prices. Cigarettes, which in the past three years have risen to new high levels in total quantities produced in Canada, and which constitute the principal class of tobacco products in point of net sales, are sold mainly in brands retailing at $1.00 per hundred cigarettes. In 1932, when the excise duty on cigarettes was reduced from $6.00 per thousand cigarettes to $4.00, the former retail price of $1.25 per hundred cigarettes was reduced to the present $1.00 price, and the slight reduction not represented by the tax change was accounted for by a reduction in distributors' margins made by the leading manu-

facturer. Except for reductions on one or a few brands at intervals prior to 1936 by companies other than Imperial Tobacco Company and notably by the W. C. Macdonald company, the minimum retail price of cigarettes was maintained at $1.25 per hundred cigarettes in the years prior to 1932 and has been held at $1.00 per hundred since. In the United States, where the excise tax is $3.00 per thousand cigarettes, and where price competition in the sale of tobacco products by distributors has not been stifled as here and no one manufacturer dominates the industry, a number of brands of cigarettes are sold at half of the minimum retail price here. These brands, retailing at half the Canadian price, or at 10 cents per package of twenty cigarettes, are reported to account for about ten per cent of the total value of United States cigarette sales. There has been little control by United States manufacturers of prices to consumers. The brands selling in the United States in largest volume in recent years, have sold at retail prices of approximately from 60 to 75 cents per hundred cigarettes, or at 15 cents and less per package of twenty cigarettes. Average manufacturer's sales value of all cigarettes sold by Imperial Tobacco Company of Canada, as stated by the company, exclusive of both excise and sales taxes, was $3.86 per thousand cigarettes in 1929, $3.23 in 1936 and $3.20 in 1937. The corresponding figures for cut tobacco per pound were reported as $1.06 in 1929, 86 cents in 1936 and 85 cents in 1937. In 1929 the proportion of domestic raw leaf to total raw leaf used in the manufacture of tobacco products in Canada, as reported by the Dominion Bureau of Statistics, was 59 per cent, while in 1936 it had risen to 85 per cent. In the case of cigarettes the proportion of domestic raw leaf to total raw leaf used had risen from 34 per cent in 1929 to 80 per cent in 1936. For the same years, net profits of Imperial Tobacco Company of Canada were shown at $5,862,000 in the company's year ended September 30, 1929, $6,058,000 in the calendar year 1936 and $6,489,000 in 1937[1].

Distributors generally have not been active in insisting upon the right to sell at lower than these fixed prices. While there have been complaints against the methods of control represented by the Imperial agreements, the distributors for the greater part appear to consider it to their immediate advantage to have guaranteed margins of gross profits and to be relieved of the necessity of competing in price in the services they render. Such escape from the need of reckoning with normal price competition in the operation of one's business might appear attractive to any group of distributors. The Imperial Tobacco Company has expressed itself as decidedly in favour of these present policies of control, which were introduced largely at its initiative and are being enforced largely through its insistence and support. But it is not sufficient justification for a price or trade combination policy to claim that it is satisfactory alike to manufacturers and wholesale distributors who shape the policy and administer it in their own interests. The interests of the ultimate buyer of the product must be considered. Under this system the consumer is deprived of that element in competition among dealers which is his most effective safeguard and is exposed to the costly elements which are characteristic of non-price competition.

The system of price maintenance, involving fixing of resale prices, certain standardization of packaging and other uniformity in trade practices, has undoubtedly contributed toward the lessening of price competition among manufacturers on important classes of tobacco products. Rivalry between manufacturers for the patronage of consumers continues but the emphasis is now thrown on more extensive advertising and the provision of additional services and other selling facilities, all of which tend to increase the national cost of

---

[1] After all charges and expenses, including income tax, and including the profits of subsidiary companies only to the extent of dividends declared by such subsidiaries and applicable to the holdings of the Imperial Tobacco Company of Canada.

merchandising in the industry. The extent to which advertising costs in the tobacco industry have developed is shown in the evidence given before the Price Spreads Committee in 1934 by an officer of the Imperial Tobacco Company, who stated: "I do not hesitate to tell you that during the three years of my connection with the Imperial Tobacco Company we have spent approximately three and one-half million dollars in salesmen's salaries and expenses and nine and a half million dollars in advertising our brands."[1]

One effect of these arrangements is that no tobacco or cigarettes made by any manufacturer may be sold by a wholesale or retail dealer in Canada handling products of the Imperial Tobacco Company unless they are sold at prices fixed by the manufacturer. Not only are all tobacco products in Canada required to be sold to the public at fixed prices, barring negligible exceptions, but in the case of the leading class represented by cigarettes about ninety-five per cent of all cigarettes in Canada are sold at one identical price to all consumers, with this price enforced regardless of source of manufacture, quantity, or any other consideration. Reference has already been made to obstacles in the way of independent manufacturers seeking to sell any brands below this fixed price. If a dealer reduces the fixed price of any tobacco product so much as by giving even a paper folder of matches, the Imperial company under its written agreements will refuse to permit him to buy any Imperial goods, even if the article so reduced in price is the product of some other tobacco manufacturer. The seriousness of this penalty is manifest when it is recognized that inability to handle Imperial brands means the practical elimination of a dealer whose business consists mainly of tobacco products.

On the basis of the information secured in this investigation and summarized in this report it is my opinion that the suppression of competition which has been effected in this industry is distinctly against the public interest, and that it is against the public interest to leave it to one company or to any group of firms to proceed in this manner in setting aside the controls which operate generally under a competitive system, as well as in deciding who may engage in selling tobacco products and on what terms and in dictation by one company of the prices at which products of its manufacture constituting the greater part of the products of the entire industry shall be sold to the public by all distributors. Apart from its direct effect on prices and profits, it is submitted that this suppression of competition is in itself against the interest of the public, both in its hampering effect on reasonable freedom of enterprise and in the longer-term economic loss to the community arising from such private monopolistic regulation of an important industry. The basic position of the law with respect to trade combinations of this class, and the practical reasons for this position, are believed to be broadly indicated in the following passage from the reasons for judgment in a case appealed to the Supreme Court of Canada:[2]

> "The state assuredly has the right to withdraw its aid from him who plots with another to deprive his fellow-men of the reasonable expectations each of them is entitled to cherish if the ordinary results of competition are allowed that free scope upon which so much of prosperity and happiness of the dwellers in a free country hangs."

This investigation arose primarily from conditions in the province of Alberta where, as in other provinces, retailers have been refused or prevented from securing supplies of tobacco products from wholesalers or manufacturers, and wholesalers and would-be wholesalers have been similarly refused supplies, for the purpose and with the result of maintaining fixed prices and monopolistic trade restrictions. The nation-wide spread of these restrictions, effected and

---

[1] Minutes of Proceedings and Evidence, p. 1910.
[2] Shragge v. Weidman, 46 Can. S.C.R. 1.

made possible essentially by the policies of the Imperial Tobacco Company of Canada, has been shown in this report. It is my conclusion that a combine within the meaning of the Combines Investigation Act exists in the distribution of tobacco products and that the Imperial Tobacco Company of Canada, Limited, and the Imperial Tobacco Sales Company of Canada, Limited, and the Northern Alberta Tobacco and Confectionery Jobbers' Association have been parties and privy to and have knowingly assisted in the formation and operation of this combine.

F. A. McGREGOR
*Commissioner, Combines Investigation Act.*

OTTAWA, August 31, 1938.

# ANNEX I

## FORM OF AGREEMENT BETWEEN MEMBERS OF ASSOCIATIONS OF WHOLESALE TOBACCO DISTRIBUTORS

ENTITLED

## "JOBBERS' SELLING ARRANGEMENT"

## JOBBERS' SELLING ARRANGEMENT

MEMORANDUM OF AGREEMENT MADE AT

on this day of 1936

BETWEEN

..........................................................

(hereinafter called the "Association")

OF THE FIRST PART;

AND

(Name) ..................................................

(hereinafter called the "Jobber")

(Street Address) .................................. (Town)..........................

(Province)........................................

OF THE SECOND PART.

WHEREAS the Jobber is a wholesale dealer in tobacco products; and

WHEREAS the present agreement is entered into with a view to improving conditions in relation to trade in Cigarettes, Tobacco, Snuff, Cigars, Little Cigars and Cigarette Papers (hereinafter referred to as "tobacco products");

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that the Jobber, in consideration of the benefits and advantages which will accrue to him from the activities of the Association hereby covenants and agrees with the Association and with each and every person, firm or corporation who may sign the present agreement:—

1. That he will sell tobacco products only to the recognized retail trade and only to those in the said trade who are maintaining retail prices and carrying on orderly merchandising, save that he may sell tobacco products of any Manufacturer at Jobbers' Selling Prices to other Jobbers who are recognized distributors of such Manufacturer.

2. That he will not sell any tobacco products at prices less than the Jobbers' Selling Prices set out in Price Lists issued by Manufacturers from time to time.

3. That he will not grant a discount in any shape or form on any tobacco products and, without limiting the generality of the foregoing, will not offer any other goods at prices or on terms which, in the opinion of the Investigating Committee hereinafter referred to, constitute an inducement to prospective purchasers of tobacco products; or offer free goods of any kind or give a discount on any goods, part of which discount might be deemed to apply to any tobacco products, and if at any time he grant a discount on other goods, tobacco products shall not be included, but shall, at all times and under all conditions, be sold at net prices with no discounts for cash or otherwise.

4. That he will not sell or offer for sale any tobacco products on terms of payment exceeding the maximum of thirty days from date of shipment.

5. That he will not solicit or accept orders for, or make deliveries of, tobacco products on Sunday.

6. (*a*) That in respect to shipments of tobacco products destined to any point in the Provinces of British Columbia, Ontario (excluding the districts of the Twin Cities Tobacco & Confectionery Jobbers' Association and the Manitoba Tobacco Jobbers' Assocation), Quebec, Nova Scotia, New Brunswick and Prince Edward Island, shipping charges may be prepaid.

(*b*) That in respect to shipments of tobacco products destined to any point in the Provinces of Alberta, Saskatchewan, Manitoba and the districts of the Twin Cities Tobacco & Confectionery Jobbers' Association and the Manitoba Tobacco Jobbers' Association in Ontario, shipping charges may be prepaid to Recognized Jobbing Points only; shipping charges to other destinations must be F.O.B. shipping points with the understanding that allowance may be made to equalise shipping charges with the rate existing between the nearest Recognized Jobbing Point and the destination.

7. That it is understood:

(*a*) The expression "recognized retail trade," when used herein, means merchants who are regularly dealing in tobacco products, and who operate a store, club, canteen, or other place, where a stand is maintained for the sale of tobacco products at retail prices. Vending machines and Peddlers shall not be considered as part of the retail trade. "Peddlers" means individuals or companies who, carrying a stock of tobacco products with them, call on consumers at their homes or places of business and offer such products for sale.

(*b*) "Retail Price Cutting" means the making of a discount, allowance or rebate of any kind and, without limiting the generality of the foregoing, includes offering or promising any inducement such as money, matches, coupons, deals, free goods of any kind, or any present or future bonus or discount that might be deemed to constitute directly or indirectly a concession in retail prices and/or permitting the operation of a punch board or other game of skill or chance or mixed skill and chance which entitles any player to receive any tobacco products.

(*c*) "Retail Prices" means the prices from time to time set out in Price Lists published by Manufacturers at which their respective tobacco products will be sold to consumers.

(*d*) "Shipping Charges" means, in the case of shipments made by rail, the rates approved by the Board of Railway Commissioners for Canada, and in the case of shipments made by truck, the prevailing trucking rates between the point of shipment and destination, less any equalization on account of competitive jobbing points, the charges in both cases to include the weight of product and packing. In the case of a Jobber operating his own delivery service or employing a private delivery service, shipping charges shall be computed and charged on the basis described in this paragraph.

8. That he will be responsible for the actions of his travellers and employees, and agrees that all infringements or irregularities by them of this Agreement shall be the same as if committed by him.

9. (*a*) That he hereby agrees to and approves of the appointment by the Association of an Investigating Committee with full powers to enquire into any alleged violation by the Jobber of any of the provisions of this Agreement. The Jobber agrees to be bound by the decision of that Committee.

(*b*) If at any time in the opinion of the majority of the Committee, he has failed to fulfil any of his undertakings herein, the Committee may recommend to the Manufacturers that they sell him only at Jobbers' Selling Prices, for such period as the Committee may deem advisable, or at the option of the Manufacturers they close his account for the same period, and he further agrees that the Manufacturers may act upon such recommendation.

(*c*) In the event of any Manufacturer selling him at Jobbers' Selling Prices, he agrees that so long as such prices remain in effect he will purchase the products of such Manufacturer only from that Manufacturer.

(*d*) In the event of any Manufacturer refusing to sell him, or closing his account; he agrees that so long as such restrictions remain in force, he will not purchase such Manufacturer's products from another Jobber.

(*e*) He further agrees that he will not supply any Jobber (including any branch of the Jobber's own business) with any tobacco products by sale, exchange, loan or otherwise during such time as such Jobber is not purchasing tobacco products at Jobbers' Cost Prices.

10. That he will comply with, and be bound by, all rules which may from time to time be made by the Association dealing with fair trade practices and orderly merchandising in relation to tobacco products, and that such rules, when so made and a copy sent to the Jobber by registered mail, shall form part of this Agreement as fully as if set forth at length herein.

11. This Agreement shall remain in force until terminated by notice in writing by either party to the other.

IN WITNESS WHEREOF this Agreement has been duly signed by both parties hereto.

| | |
|---|---|
| ............................................ | ............................................ |
| (Witness) | (Association sign here) |
| ............................................ | ............................................ |
| (Witness) | (Jobber sign here) |

# ANNEX II

## FORMS OF AGREEMENT

BETWEEN

## IMPERIAL TOBACCO SALES COMPANY OF CANADA LIMITED AND DIRECT BUYERS

FORM "A" JOBBERS DEALING IN TOBACCO GOODS AT WHOLESALE ONLY.

FORM "B" RETAILERS DEALING IN TOBACCO GOODS BOTH AT RETAIL AND WHOLESALE.

FORM "C" RETAILERS DEALING IN TOBACCO GOODS AT RETAIL ONLY.

## FORM "A"

SELLER'S COPY

**Memorandum of Agreement** made at
on this day of 193 .
BETWEEN:

IMPERIAL TOBACCO SALES COMPANY OF CANADA, LIMITED
(hereinafter called the "Seller")

OF THE FIRST PART:

AND:

(Name)..........................................................................
(hereinafter called the "Buyer")

(Street Address)..............................................................
(Town)......................................(Province)...........................

OF THE SECOND PART:

WHEREAS the Seller is the distributor of those certain goods hereinafter described;

AND WHEREAS the Buyer is a Jobber dealing in such goods at wholesale only;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that the parties hereto mutually covenant and agree as follows:—

DEFINITIONS:

In this Agreement, unless there is something in the subject or context inconsistent therewith, the words and expressions following will have the following meanings, namely:—

(*a*) "Goods" will mean cigarettes, tobacco (cut and plug), little cigars, cigarette papers and snuff distributed by distributors or manufacturers and "Imperial Goods" will mean similar goods distributed by the seller.

(*b*) "Jobbers' Selling Prices" will mean the prices for the time being fixed by the Seller or other distributors or manufacturers at which their respective goods will be sold to Dealers and set forth in Price Lists published by the Seller or other distributors or manufacturers from time to time.

(*c*) "Retail Prices" will mean the prices for the time being fixed by the Seller or other distributors or manufacturers at which their respective goods will be sold to consumers and set forth in Price Lists published by the Seller or other distributors or manufacturers from time to time.

(*d*) "Dealer" will mean a store, canteen, club or other place where a stand for the sale of Goods at Retail Prices is maintained.

Words importing the singular only will also include the plural and vice versa, and words importing persons will include individuals, firms and corporations and vice versa.

1. That the purpose of this Agreement is to promote fair trade practices and to eliminate unfair cut price competition amongst Jobbers and retail Dealers.
2. That the Seller hereby appoints the Buyer as a Jobber of Imperial Goods upon the conditions hereinafter set forth; such appointment to continue so long as this Agreement remains in force.
3. That the Buyer may sell Imperial Goods and Goods of other distributors or manufacturers (if permitted by them) to institutions at Jobbers' Selling Prices when such Goods are intended for free issue.
4. That the Buyer may sell at Jobbers' Selling Prices Imperial Goods to Jobbers recognized by the Seller, and Goods of other distributors or manufacturers (if permitted by them) to Jobbers recognized by such distributors or manufacturers.
5. That save as hereinbefore provided the Buyer will sell Imperial Goods and Goods of other distributors or manufacturers, regardless of quantity, only to Dealers and only at the respective Jobbers' Selling Prices.

6. That the Buyer will not exchange with any Jobber or Dealer any Imperial Goods for other Goods or vice versa.
7. That the Buyer will not, at any time, sell or supply Imperial Goods or Goods of other distributors or manufacturers to any Dealer who is selling or proposes to sell such Goods at prices other than the respective Retail Prices, and the Buyer undertakes promptly to notify the Seller of the name of any such Dealer.
8. That the Buyer will firmly maintain Jobbers' Selling Prices and will not sell directly or indirectly any Imperial Goods or Goods of other distributors or manufacturers at other than such prices, and will not attempt to evade the meaning or spirit of this Agreement in any way and in particular by making any allowance or rebate of any kind or by offering or promising any inducement such as money, matches, coupons, deals, free goods or any present or future bonus or discount that would directly or indirectly constitute a concession in such prices.
9. That the Buyer may sell Cigars only to a Dealer or Jobber.
10. That this Agreement may be summarily terminated at any time by notice in writing given by either party to the other party.

IN WITNESS WHEREOF this Agreement has been duly signed by both parties hereto.

IMPERIAL TOBACCO SALES COMPANY OF CANADA, LIMITED.

Witness:.................................. ......................................

Witness:.................................. ......................................

(Witness sign here) (Buyer sign here)

## FORM "B"

SELLER'S COPY

**Memorandum of Agreement** made at
on this day of 193 .

BETWEEN:

IMPERIAL TOBACCO SALES COMPANY OF CANADA, LIMITED
(hereinafter called the "Seller")

OF THE FIRST PART:

AND:

(Name)..........................................................................................
(hereinafter called the "Buyer")

(Street Address)..........................................................................................

(Town)........................................(Province)..............................

OF THE SECOND PART:

WHEREAS the Seller is the distributor of those certain goods hereinafter described;

AND WHEREAS the Buyer is a Retailer dealing in such goods both at retail and wholesale;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that the parties hereto mutually covenant and agree as follows:—

DEFINITIONS:

In this Agreement, unless there is something in the subject or context inconsistent therewith, the words and expressions following will have the following meanings, namely:—

(*a*) "Goods" will mean cigarettes, tobacco (cut and plug), little cigars, cigarette papers and snuff distributed by distributors or manufacturers and "Imperial Goods" will mean similar goods distributed by the Seller.

(*b*) "Jobbers' Selling Prices" will mean the prices for the time being fixed by the Seller or other distributors or manufacturers at which their respective goods will be sold to Dealers and set forth in Price Lists published by the Seller or other distributors or manufacturers from time to time.

(*c*) "Retail Prices" will mean the prices for the time being fixed by the Seller or other distributors or manufacturers at which their respective goods will be sold to consumers and set forth in Price Lists published by the Seller or other distributors or manufacturers from time to time.

(*d*) "Dealer" will mean a store, canteen, club or other place where a stand for the sale of Goods at Retail Prices is maintained.

Words importing the singular only will also include the plural and vice versa, and the words importing persons will include individuals, firms and corporations and vice versa.

1. That the purpose of this Agreement is to promote fair trade practices and to eliminate unfair cut price competition amongst Jobbers and retail Dealers.
2. That the Seller hereby appoints the Buyer as a direct retail Dealer with jobbing privileges of Imperial Goods upon the conditions hereinafter set forth; such appointment to continue so long as this Agreement remains in force.
3. That the Buyer may sell Imperial Goods and Goods of other distributors or manufacturers (if permitted by them) to institutions at Jobbers' Selling Prices when such Goods are intended for free issue.
4. That the Buyer may sell at Jobbers' Selling Prices Imperial Goods to Jobbers recognized by the Seller and Goods of other distributors or manufacturers (if permitted by them) to Jobbers recognized by such distributors or manufacturers.
5. That the Buyer may sell cigarettes, tobacco (cut and plug), cigars, little cigars, cigarette papers and snuff to consumers, but only at the respective Retail Prices.
6. That save as hereinbefore provided the Buyer will sell Imperial Goods and Goods of other distributors or manufacturers, regardless of quantity, only to Dealers and only at the respective Jobbers' Selling Prices.

7. That the Buyer will not exchange with any Jobber or Dealer any Imperial Goods for other Goods or vice versa.
8. That the Buyer will not, at any time, sell or supply Imperial Goods or Goods of other distributors or manufacturers to any Dealer who is selling or proposes to sell such goods at prices other than the respective Retail Prices, and the Buyer undertakes promptly to notify the Seller of the name of any such Dealer.
9. That the Buyer will firmly maintain Retail Prices and Jobbers' Selling Prices accordingly as sales are made to consumers or Dealers and will not sell directly or indirectly to consumers or Dealers, as the case may be, at other than such prices, and will not attempt to evade the meaning or spirit of this Agreement in any way and in particular by making any allowance or rebate of any kind or by offering or promising any inducement such as money, matches, coupons, deals, free goods or any present or future bonus or discount that would directly or indirectly constitute a concession in such prices.
10. That save as hereinbefore provided the Buyer may sell Cigars only to a Dealer or Jobber.
11. That this Agreement may be summarily terminated at any time by notice in writing given by either party to the other party.

IN WITNESS WHEREOF this Agreement has been duly signed by both parties hereto.

IMPERIAL TOBACCO SALES COMPANY OF CANADA, LIMITED.

Witness:.................................... ....................................

Witness:.................................... ....................................

(Witness sign here) (Buyer sign here)

## FORM "C"

SELLER'S COPY

**Memorandum of Agreement** made at
on this day of 193 .

BETWEEN:

IMPERIAL TOBACCO SALES COMPANY OF CANADA, LIMITED
(hereinafter called the "Seller")

OF THE FIRST PART:

AND:

(Name)........................................................................................................
(hereinafter called the "Buyer")

(Street Address)..........................................................................................

(Town)......................................................(Province)..................................

OF THE SECOND PART:

WHEREAS the Seller is the distributor of those certain goods hereinafter described;

AND WHEREAS the Buyer is a Retailer dealing in such goods at retail only;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that the parties hereto mutually covenant and agree as follows:—

DEFINITIONS:

In this Agreement, unless there is something in the subject or context inconsistent therewith, the words and expressions following will have the following meanings, namely:—

(*a*) "Goods" will mean cigarettes, tobacco (cut and plug), cigars, little cigars, cigarette papers and snuff distributed by distributors or manufacturers and "Imperial Goods" will mean similar goods distributed by the Seller.

(*b*) "Retail Prices" will mean the prices for the time being fixed by the Seller or other distributors or manufacturers at which their respective goods will be sold to consumers and set forth in Price Lists published by the Seller or other distributors or manufacturers from time to time.

(*c*) "Dealer" will mean a store, canteen, club or other place where a stand for the sale of Goods at Retail Prices is maintained.

Words importing the singular only will also include the plural and vice versa, and words importing persons will include individuals, firms and corporations and vice versa.

1. That the purpose of this Agreement is to promote fair trade practices and to eliminate unfair cut price competition amongst retail Dealers.
2. That the Seller hereby appoints the Buyer as a direct retail Dealer of Imperial Goods upon the conditions hereinafter set forth; such appointment to continue so long as this Agreement remains in force.
3. That all sales by the Buyer of Imperial Goods or Goods of other distributors or manufacturers will, regardless of quantity, be made only at Retail Prices.
4. That the Buyer will not exchange with any Jobber or Dealer any Imperial Goods for other Goods or vice versa.
5. That the Buyer will firmly maintain Retail Prices and will not sell directly or indirectly any Imperial Goods or Goods of other distributors or manufacturers at other than such prices, and will not attempt to evade the meaning or spirit of this Agreement in any way and in particular by making any allowance or rebate of any kind or by offering or promising any inducement such as money, matches, coupons, deals, free goods or any present or future bonus or discount that would directly or indirectly constitute a concession in such prices.
6. That this Agreement may be summarily terminated at any time by notice in writing given by either party to the other party.

IN WITNESS WHEREOF this Agreement has been duly signed by both parties hereto.

IMPERIAL TOBACCO SALES COMPANY OF CANADA, LIMITED.

Witness:........................................ ..........................................

Witness:........................................ ..........................................

(Witness sign here) (Buyer sign here)

# ANNEX III

# AN ECONOMIC ANALYSIS OF RESALE PRICE MAINTENANCE IN THE CANADIAN TOBACCO INDUSTRY

BY

C. A. Curtis, Ph.D.,
*Professor of Economics*
*Queen's University*

Kingston, 1937

## PREFACE

The present study of Resale Price Maintenance in the Canadian Tobacco Industry represents an attempt to analyse the problem objectively and to state the economic points involved. The work was undertaken at the request of the Imperial Tobacco Company which has provided every possible co-operation. The writer is indeed indebted to the officers of the company for their assistance and for their stern insistence upon an impartial approach. The writer is alone responsible for the analysis developed and must accept responsibility for any imperfections; his main hope is to present fairly what economic science has to say on the problem and what, in the main, will be concurred in by fellow economists.

# RESALE PRICE MAINTENANCE IN THE CANADIAN TOBACCO INDUSTRY

## TABLE OF CONTENTS



## LIST OF TABLES

## Chapter I

## INTRODUCTION

The object of the present study is to present impartially and accurately the economic conclusions which an economic analysis, based on accepted economic principles may throw upon the practice of resale price maintenance in the Canadian tobacco industry. This means that the effects of such a price policy upon the economy at large as well as more narrowly upon growers, manufacturers, and distributors must be considered. The present survey covers this scope although more emphasis is placed on the effects upon the manufacturing and distributing parts of the industry. A great deal of the material—official and otherwise—on the subject of resale price maintenance has been concerned with what might be termed "marketing" rather than with fundamental economic aspects of the problem. Both aspects, of course, must be included in any general and comprehensive analysis but the effort in this survey has been to get down to economic principles; the actual degree of success attained may be uncertain but the line of endeavour should be clear.

Because this survey has been made for those engaged in the tobacco business and therefore familiar with the "common knowledge" of the trade, it has not been thought necessary to give the same amount of factual background as would be required for those unfamiliar with the industry. It is to be hoped that no essential facts have been omitted because of this procedure. As this study is concerned with resale price maintenance in the Canadian tobacco trade, many points and arguments involved in a consideration of resale price maintenance generally are not considered because peculiar conditions in the tobacco trade make them of little significance. It has been the intention, however, to include all general points which have relevancy for this analysis.

The problem of resale price maintenance is essentially an aspect of the larger problem of monopoly[1] and is therefore, because it impinges upon public policy, also a problem in law. The present survey, however, is concerned primarily with the economics of resale price maintenance in the Canadian tobacco industry rather than with legal aspects. The legal side may interject itself at times but is, from the present viewpoint, definitely subsidiary. However, a summary of the legal aspects by a competent authority is included in Appendix 1.

Resale price maintenance may be defined as the practice of the manufacturer naming a price for his product at which all retailers must sell it. As the jobber or wholesaler stands between the manufacturer and the retailer, it is the usual practice, under resale price maintenance plans, for the manufacturer to state the margin or mark-up which the wholesaler may add to his purchase price. A complete resale price maintenance plan starts with a given manufacturer's price to the jobber, who marks it up a stated percentage and who, in turn, sells to the retailer at a set price; the retailer takes a given profit or mark-up and sells to the consumer at a set price. Frequently, general conditions of sale, discounts, credits, etc., are a part of the system in order to avoid hidden rebates and price cuts. Thus effective resale price maintenance includes every business concerned in the production and distribution of the product and must give a fixity to the price structure.

The effectiveness of resale price maintenance plans depends to a great extent upon the methods used to enforce them. The methods vary from place to place and from time to time, depending upon the peculiar circumstances existing. The refusal to sell, the trade association, the stop list, and similar devices are the main methods of enforcing resale price practices. The economic effects of resale price maintenance may be the same irrespective of the method used to enforce the practice but the legal implications differ with the particular techniques used. Thus it may be legal to use one method of enforcing price maintenance but illegal to use some other method. It is in connection with the method of maintaining

[1] "(f) The Trade practices [resale price maintenance] into which we have enquired, impinge upon a much wider problem — the problem of monopolistic combinations and trusts — which is outside the scope of our reference. If, at some future time, the question of public policy in relation to this wider problem should be examined, the possibility of support being given by the price maintenance system and boycotts to monopolistic combinations and trusts ought, we think, not to be overlooked." *Restraint of Trade*, Report of Committee appointed by the Lord Chancellor and the President of the Board of Trade to consider certain trade practices, (London: H. M. Stationery Office, 1931), p. 34, General Conclusions, section f. See also E. T. Grether, "Resale Price Maintenance and the Consumer", *American Marketing Journal*, July, 1935, p. 149.

the system that the legal aspects of the problem are important; indeed it is usually through the method or technique used to maintain the system that the courts become involved.

The actual situation in the Canadian tobacco industry may be summarized. There are in Canada five main associations of wholesalers or jobbers such as the Western Jobbers' Association, which include practically all the eligible dealers, and which are the immediate agents for enforcing the system of resale price maintenance. Membership in the association involves the acceptance of certain terms, which are set out in a formal agreement made between the jobber and his association and which include the right to disciplinary action. The form is standard for all associations and the clauses cover terms of sale, credit, discounts, prices, freight absorption, etc., so that the conditions of sale are pretty well standardized. On occasion, representatives of the jobbing association have national meetings for the purpose of making uniform conditions and contracts and for dealing with matters of common interest.

If any concern is accused of price cutting, or violating any part of the contract, a committee of the association investigates the case and makes its report to the association. If the charge is proved, the tobacco manufacturers are notified and they can, if satisfied with the complaint, inform the concern involved that it can buy supplies for a period—a month or so—only at jobbers' selling prices; or they may close the account for a period. If the concern agrees to maintain prices, and abide by the terms of the contract, it may again be placed on the selling lists of the manufacturers. If a retailer should offend, the jobbers and manufacturers are requested to withhold supplies until the offences stop and a satisfactory agreement has been reached.

The system also requires all wholesalers and direct retailers to sign price maintenance agreements with the Imperial Tobacco Company; the agreements with the other manufacturers are only verbal ones. The Imperial contract requires the dealer—jobber or retailer—not only to maintain prices on the products of the Imperial Tobacco Company but also to maintain the prices on the products of all other manufacturers. The jobbers' associations are financed by membership fees but on occasion some manufacturers may contribute funds to assist an association which is in financial difficulties.[2] The manu-

The general impression is that the jobbers' associations are the backbone of the resale price maintenance system in the Canadian tobacco trade. And it is further believed that, if the associations should go, the system would go. On the other hand, some of the jobbers themselves have the opinion that the Imperial Tobacco Company is the vital pivot to the system and that without its co-operation, initiative, and vigilance, the system could not exist. It is quite probably true that both are essential to the system and that neither one—certainly not the jobbers—could maintain it alone, or at least without the greatest difficulty. The British experience confirms this.[3]

In general, resale prices on tobacco products appear to be well maintained throughout Canada and there is no wide-spread price cutting or violation of the uniform conditions of sale. Certainly, the officers of the Ontario Association of Wholesale Tobacco Distributors feel that price cutting is small and not serious. At the same time, there are always some few cases of price cutting going on, and very infrequently, sporadic outbreaks occur in the larger cities. It is probably true that only the constant vigilance of the active members of the trade keeps the problem in control. In general, however, one must conclude that price maintenance in the Canadian tobacco trade was well maintained throughout the depression and is well observed at the present time.

This condition has existed fairly well for the last ten or eleven years but prior to that, its observance was not so wide. Before and during the war, there were efforts to institute and maintain resale price maintenance but the degree of success was limited, and from 1920 to 1925, price cutting was fairly common in parts of Canada. However, price maintenance proponents persisted, and in 1926 the Ontario tobacco trade was

---

[2] Special Committee of the House of Commons on Price Spreads and Mass Buying, ***Proceedings and Evidence*** (Ottawa: King's Printer, 1934), Vol. II, p. 1827.
facturers have no organization of their own.

[3] "Despite serious efforts on the part of the Imperial Tobacco Company to check cutting,
the representatives of the distributors assured us that price cutting had greatly increased during
the preceding four or five years, and they expressed the view that unless drastic action were
taken to prevent cutting the price maintenance system would break down, since when laxly
enforced it was a danger rather than a help. . . Since we heard evidence we understand that
the Imperial Tobacco Company, in response to representations from the trade has changed its
policy in regard to co-operation with other manufacturers and with the distributors for the
suppression of cutting; and that a Tobacco Trade Association representative of the Company,
of the outside manufacturers and of the distributors' organizations has quite recently been
formed." ***Restraint of Trade,*** p. 29.

re-organized and the system of resale price maintenance put on a more effective basis; conditions in other districts were tightened until the whole Dominion was pretty well covered and the present degree of control attained.[4]

Although the present survey is concerned primarily with resale price maintenance in Canada, the experience and evidence from Great Britain and the United States has been drawn on extensively. The matter of resale price maintenance systems has been the subject of two inquiries in the United Kingdom since the war but neither one produced analyses or general conclusions of much weight. In the United States, there have been numerous public hearings, reports, inquiries, and general discussion on the subject; consequently, the United States presents more authentic and interesting material than any other country.

Although an analysis of resale price maintenance could be in terms of each manufactured tobacco product, the generalized nature of the business of the large producers makes it possible to discuss the economic effects of the policy as if there were but one tobacco product. This is the general position assumed here although in the main, cigarettes and cut tobacco, because of their importance, provide the illustrative material.[5]

---

[4] Imperial Tobacco Company, Folders No. 8 and 9.

[5] See Chapter IV *supra.*

CHAPTER II

## ECONOMIC ASPECTS OF RESALE PRICE MAINTENANCE

The first point which should be emphasized is the social or community viewpoint of economics. Economics is the study of a community's business activities from the viewpoint of their effects upon the economic welfare of the community. This approach cannot be too strongly insisted upon. Economics is not concerned primarily with the fortunes of one group or class but rather with the general community effects of policies and practices. Economists may as individuals have opinions as to public policy but economics is mainly concerned with analysing—that is seeing—what the economic results of policies and practices are.

In analysing the effects of policies and practices, economics takes as its test the effects of practices and policies upon the size of the national income, and, under certain conditions, upon the distribution of that income. It is, of course, realized that the measurement of the national income presents certain difficulties and that it is impossible to assess in money, or in terms of income, certain psychological returns; but these difficulties are reduced as far as possible and the national income is analysed and discussed in terms of the aggregate money income of the community. There is the final consideration, that, despite its limitations, this is the only quantitative method by which judgments respecting policies and practices may be made.[1]

Although the national income is measured in terms of money, it is ultimately the flow of goods and services which comes into the hands of members of the community. Thus the national income may be resolved into the volume of production of goods and services; and the effects of any policy or practices are usually assessed in terms of its effects upon the volume of production in the relevant field. Because of this substitution, the practice of resale price maintenance may be analysed with respect to the narrower concept of production rather than the broader one of national income. The term "production" is used in its broad economic sense and includes services as well as the actual physical production of goods.

Because of this interest in production and the common sense assumption that the value of production or income in any industry should be related to the amounts of land, labour, capital and management—all of which are summed up in the general term "resources"—put into the industry, the economist is constantly interested in the distribution of resources among the industries and occupations of the community. Fundamentally, the means for production—resources—are scarce and because they are scarce, they must be economized. The price system is one method of allocating resources—they go to those places and activities where the price indicates that they can be most profitably used.[2] Thus economics is constantly preoccupied with the distribution of resources and if a given distribution of resources maximizes the volume of production—that is the national income.

As a rule, the public is interested in and dislikes the exploitation element in monopolistic practices. That is, it resents the higher prices charged to itself. The economist is interested in this aspect but not to the same extent as in the distribution of resources. The reason for this is that in the first case, someone does get the income—if the monopolist can charge higher prices the buyer's loss is his gain—it is a transfer problem, for the income exists; but if the economic resources of the community are not used to maximize the national income, then the community has a loss for which there is no corresponding gain. Consequently, the economist is pre-occupied with the distribution of the community's resources among its industries, and the activities of each industry is analyzed in light of this test.

It is essential that certain concepts which are important in economic analysis should be clear and that certain common terms which are used in economics should be defined and understood because they have in economic usage a precision which they do not have in their everyday use. One concept which is important in the present survey is that of elasticity of demand. This idea is concerned with the relationship between changes in the price of a commodity and the consequent amount of change in the sales of the product. If the price of the product changes—say increases—ten per cent and the sales

[1] See A. C. Pigou, *Economics of Welfare* (London: MacMillan, 1932), Chapters I-VIII.
[2] G. Cassel, *Theory of Social Economy* (New York: Harcourt Brace, 1932), Chapter 1.

decrease twenty per cent, the commodity is said to have an elastic demand; if in this case the sales should decrease five per cent, the demand would be termed inelastic. Or to explain the point in another and possibly simpler way, an elastic demand is regarded as one where, as the price increases, the aggregate volume of money spent on the product decreases; an inelastic demand is the reverse, that is as the price increases the aggregate volume of money spent on the commodity increases. In other words, the number of units sold decreases but the money sales increase. This is a simple exposition of a technical point which is very important in market analysis.

The degree of elasticity depends on the number of uses for the product, the number and possibility of substitutes, and so on; further, the elasticity of demand for a product may be—probably is—different at relatively low prices than at relatively high prices. Generally speaking, the demand for tobacco products as a whole, and within the ordinary range of prices is taken to be inelastic[3] but at relatively high prices this might not be so; the demand foɪ any one form of tobacco may, however, because of the possibility of substitution, be elastic. This is a point of importance in determining the prices of different tobacco products; it is particularly important if the manufacturer is primarily interested in one product; the matter is more easily adjusted where, as in Canada, the large manufacturers cover practically all tobacco products.

It is also worth while distinguishing between short-run and long-run economic effects. In general the distinction is that the former are the immediate consequences while the latter are the ultimate results when the transition is over. It may be difficult to state the difference between the two in periods of time but the essential idea may be easily grasped. This distinction, which may appear too simple to justify statement here, is important, because frequently analyses are made and conclusions drawn which are good only in the short-run; entirely different results appear over a period of time. Clearly to base business or public policies, which may last for some time, on short-run conclusions is only to make trouble at a later date.

The term "competition" means simple competition which may be defined as a type of competition which occurs when the product is homogeneous—e.g. wheat—and when buyers and sellers are so numerous that an individual buyer or seller has no appreciable influence upon price. Further, subject to market imperfections, there is but one price in the market at a given time; certainly, there is a tendency towards one price—an equilibrium price. It is possible in a given situation to have the buyers meet the above test while the sellers do not, or it is possible to have the situation reversed. Ordinarily, the wheat growing industry is regarded as an example of a simple competitive industry. There are thousands of farmers growing and selling wheat; the produce is graded but the producer's name is never thought of.

However, more and more in the business world, the condition of simple competition gives place to what is called monopolistic competition. By monopolistic competition, is meant (*a*) that either there are only a few buyers and/or sellers, which gives each one some appreciable influence upon price and/or (*b*) that the products sold are not strictly homogeneous—that is, they are distinguished or differentiated in some manner, usually by trademarks, patents, etc.[4] For example, toothpaste is never sold as toothpaste but as some particular producer's toothpaste. The condition of simple competition shades into monopolistic competition and from monopolistic competition into simple monopoly where there is one buyer or seller. Because the economic behaviour and the effects of such behaviour, are so different under these sets of conditions, it is essential that they be clearly defined and understood.

The economic justification of an individualistic system of free or simple competition has been developed by a long series of keen and logical observers. In brief, and subject to certain limitations which need not be detailed here,[5] a system of simple competition distributes the resources of the community among its industries in such a way that the volume of production is maximized—no possible distribution of the given resources could make the national income any larger. This is the economic justification of a system of simple competition.

---

[3] This is to a great extent the point in the "Brief on Evils of Price Cutting" in I. T. Co. folder No. 9, see p. 4, paragraph 4. Also see E. H. Schoenberg, "The Demand Curve for Cigarettes", *Journal of Business* (University of Chicago), Vol. VI, No. 1, (January, 1933), pp. 15-35.

[4] Edward Chamberlin, *Theory of Monopolistic Competition* (Cambridge: Harvard University Press, 1935), Chapters I and IV.

[5] Such as under conditions of decreasing supply price.

As the actual economic set-up departs from the condition of simple competition the national dividend is probably reduced because of a poorer distribution of resources. And practices which contribute to such reductions in the national income are regarded as being anti-social and justifying in principle remedial action by state authority.

The growth of the corporate form of business, the reduction in the number of business units in each industry, the development of differentiated—that is named and usually advertised—products, trade-marks and patents, have all contributed in changing the industrial world from a simple competitive society to one in which monopoly elements are important. Because of the prevalence of these monopoly elements, it may be difficult to find complete examples of simple competition in the business world. The existence of all of these elements thus tends in some degree to make the allocation of the community's productive resources less favourable. Many of the practices common to businesses might come under this head; the practices may possibly benefit the business but not necessarily the community.

The development of economic thought, which demonstrated in general the capacity of simple competition to maximize the national income, was concurrent with an economic world in which the conditions of simple competition were in the main met. The departure over substantial areas of the economic world from a condition of simple competition to the conditions of monopolistic competition has developed a type of economic analysis which endeavours to meet these facts. There were, of course, discussions of these problems earlier but they were abstruse and applied to the exceptional; but now the changes in the business world have made them realistic and common.

It is unnecessary and probably undesirable to give in detail the economic analysis developed for present economic circumstances where monopolistic competition and monopoly are present. But the tentative conclusions of this analysis are relevant and may be stated briefly. In general, the probability is that the volume of production is smaller under monopolistic than under simple competition, and that prices are inevitably higher under monopolistic than under simple competition. Under conditions of monopolistic competition, profits may be excessive, normal or even less than normal; there is, however, a tendency for excess productive capacity to exist where price competition fails to operate.

As price competition is fundamental to free or simple competition and as resale price maintenance is a practice intended to eliminate price competition among dealers, it follows that this practice is one which contributes to the points thus set out. As an economic practice, then, it appears to be one which does not maximize the volume of production and thus the national income. Because the existence of a system of resale price maintenance means somewhat higher prices[6] and a lower volume of production, there must be fewer resources employed in the tobacco industry than there would be under price competition. These resources not now employed, need not involve new firms but merely greater use of resources and thus a larger volume of production by the existing businesses. Because of the inelastic demand for tobacco products at relevant prices, it is possible that the quantitative significance of this point is small. But to the extent that it does exist it is a presumption against resale price maintenance in its social aspects.

In practice, a system of resale price maintenance means one price for a commodity over a large area, possibly the whole country. The costs of supplying different places is not the same, however; clearly the net return at the factory, say in Montreal, must, because of transportation costs, be higher for sales in the Montreal territory than for sales, say in Halifax. For a light, compact product such as tobacco, this is not as serious as it would be for a heavier, bulkier commodity. But to some extent, this condition means a subsidy or bonus, by the amount of freight absorption, to the outlying territories. This form of discrimination is common in places where resale price maintenance does not exist and is in fact a separate problem.[7] But it is also an inevitable concomitant of a system of resale price maintenance. In general, the existence of freight absorption is evidence of a monopolistic practice and is thereby questioned.

All this means that the production resources of the community are not being utilized in such a way that the volume of production—that is, the national income—is at a maximum. And because of this, there is a presumption that all practices which contribute to this end may be classed as anti-social and justifying state intervention. However, so many active

[6] "Resale price fixing inevitably involves some increase of the level of prices of the commodities protected; else the system would not be worth fighting for." Grether *loc. cit.*, p. 146.

[7] *Cf.*, Basing point system in the cement industry and "Pittsburg plus" in the steel industry.

business practices are of this character that their very number precludes interference. Hence it is necessary to make the further judgment as to whether or not any particular practice is of sufficient importance to justify its being attacked.

Another economic aspect of resale price maintenance must be mentioned in passing. In general, economists are convinced that fixity or rigidity of prices is one of the factors which retards the economic adjustments necessary because of cyclical fluctuations of business; indeed, there is the added point of equity in such economic adjustments. Free prices fluctuate readily and the volume of production becomes appropriate to the price. In a depression, free or competitive prices tend to drop rapidly, and relatively the volume of production is kept up; rigid prices, however, stay up and the volume of production goes down. In one case, the price takes the main burden of adjustment; in the other, the volume of production does.[8] Clearly the community's interest in a large volume of production at low prices is not met where prices are rigid.

In general, therefore, economists agree that the more flexible prices are, the more quickly and the more equitably the necessary cyclical economic adjustments will be. Now resale price maintenance means a decided rigidity of prices; it does not mean an absolutely fixed price for all time but it does mean a rigid price for considerable periods of time. Both experience and logic support this conclusion. Consequently, this practice raises this substantial difficulty from the viewpoint of the business cycle.

Indeed, aside from cyclical variations, the community must rely upon price competition among the dealers to force them to obtain price concessions from the manufacturer and thus to pass on any economies which may be possible. Thus retail price competition is an important control for the whole price structure and resale price maintenance in certain cases must interfere with this function.[9] This is an important aspect of the problem which is often overlooked.

In general then, it would seem that in light of the generally accepted principles of economics, as developed for conditions of imperfect or monopolistic competition, the practice of resale price maintenance must reduce the national income somewhat; to this extent it is anti-social behaviour. But it is not so clear that the quantitative significance of the practice is in every case of sufficient importance to justify state intervention. This becomes a matter of judgment more than a strict application of economic principles.

---

[8] *Cf.* G. C. Means, ***Industrial Prices and their Relative Inflexibility*** (Washington: Government Printing Office, 1935), pp. 38. Printed as Senate Document No. 13, 74th Congress, 1st Session.

[9] W. H. Stevens, "Resale Price Maintenance as Unfair Competition", *Columbia Law Review*, June, 1919, p. 277 *et seq.*

CHAPTER III

## PUBLIC POLICY ON RESALE PRICE MAINTENANCE

The attitude of the state on resale price maintenance, as set out in statutes and court decisions, varies in different countries. In most European countries, price fixing in some form or other is legal, but the theories of business organization and of the state are so different in most of these countries from those prevailing here that their attitudes need not be discussed here.[1] Only three countries, Great Britain, the United States, and Canada will be discussed here. As the legal situation in Canada is set out at length in Appendix 1, it need not be elaborated here.

In Great Britain, it has generally been held that the business policy of resale price maintenance was acceptable and did not warrant state interference. Such a position may seem strange in a country such as England with its traditions of competition and free trade. But it can be explained by the conclusion that the general principles of *laisser-faire* means as little interference as possible with the individual's right of contract. And the policy of resale price maintenance is essentially one concerning the right to contract. To attack the practice as contrary to public policy meant state action and the restriction of the right to contract, which was regarded as a greater breach of *laisser-faire* than the existence of the price practice itself. This position is to a great extent a matter of judgment and relative weights which are always susceptible to change.

A further point of importance was the existence and dominance of the policy of free trade during the period when the attitude of the law was being formulated. The absence of a protective tariff was an offsetting condition to any monopolistic condition which might be developed under extreme resale price maintenance systems. This point was implied in most court decisions dealing with the subject and in some cases was explicitly stated. Now that the United Kingdom has abandoned free trade, it may in time have the effect of causing the legal position of resale price maintenance to be reconsidered and possibly modified.

Another important influence in Great Britain has been the influence of the co-operative societies which exist there to an extent and importance unknown on this continent. These societies have been generally opposed to resale price maintenance but in cases have been forced to conform. However, they always exercise a brake on the system because of the threat that they may engage in the production of their own brands in the price-maintained lines. And their resources are so great that the threat is not a meaningless one.

The subject of price maintenance was considered by official bodies in 1920[2] and again in 1931[3] when a Committee was set up by the Lord Chancellor and President of the Board of Trade to consider the subject "Restraint of Trade." The report of this committee did not condemn the practice of resale price maintenance but gave a qualified sort of approval. In fact it was a sort of Scotch verdict of "not proven". But the evidence presented to the Committee was not printed or made public and thus the basis for the conclusions was not presented. There is some reason for suspecting that the bulk of the economists' evidence was against the policy in general.

In the United States, the legal position of resale price maintenance was accepted with qualifications until about 1908 when court decisions began to question it.[4] The passing of the Clayton Act in 1914 and the establishment of the Federal Trade Commission added to the uncertainty which was not dispelled until about 1918 when it became clear that the government and the courts were against the policy. This attitude existed firmly until recently when some reversal of policy appears to be indicated.

The immediate cause of this change has been the codes and regulations under the N.R.A., which became concerned with price fixing, and the growth of state statutes, usually termed "Fair Trade Acts" and "Unfair Practices Acts". The content of these acts varies

---

1 Federal Trade Commission, *Resale Price Maintenance* Part I "General Economic and Legal Aspects", (Washington: Government Printing Office, 1929), printed as House of Representatives Document 546, 70th Congress, 2nd Session. Chapter VIII gives a survey of the situation in a number of countries.

2 *Findings and Decisions of a Committee Appointed to Inquire into the Principle of Fixed Retail Prices* (London: H. M. Stationery Office) Cmd. 662, 1920.

3 *Restraint of Trade.*

4 E. R. A. Seligman and R. A. Love, *Price Cutting and Price Maintenance* (New York: Harpers, 1932) Chapters II, III, and IV give an historic survey of price maintenance.

from state to state but in general they permit varying degrees of resale price maintenance, and attempt to prohibit certain practices regarded as unfair, e.g. giving away articles, sales below cost, secret and discriminating rebates and terms of sale, etc. The parties interested in the legislation, usually associations of distributors, concentrated their efforts on the state legislatures with the result that early in 1937, some twenty-six states had Fair Trade Acts; all apparently prohibited selling below cost and seventeen permitted fixing.[5] However, state acts could affect only intra-state trade and could not control goods passing into inter-state commerce; this made the whole position of the intra-state practice somewhat precarious and efforts were made to gain support in Congress. Earlier efforts to get approval for the Capper-Kelly bill and similar bills were not successful but later, after considerable effort, the Tydings-Miller bill, which in brief, legalized varying degrees of resale price maintenance in inter-state commerce for those states with state acts, was passed early this year by both houses but was vetoed by President Roosevelt.[6] It was then tacked to a District of Columbia appropriation bill and went through in this form.[7] It is not yet clear just what the legal effects of the act will be and doubtless, it will take time for this to show. But certainly it is evidence of some change in the policy of the United States although the degree of importance and permanence cannot yet be judged.

The Federal Trade Commission has made inquiries into the subject of resale price maintenance and in general has been and is now strenuously opposed to the policy. Its own inquiries did not lead it to support the practice and it has, from time to time, in answer to request of Congress or the President, reported unfavourably on the practice. Whether or not its attitude is sound or is approved, there is no doubt that it has given more time, attention, and research to the problem than any other agency in any country.

The answers to questionnaires sent out by the Commission in one of its investigations showed that consumers opposed the policy, that between two-thirds and three-quarters of the manufacturers replying favoured it, that over ninety per cent of the retailers were also in favour of it. The results of a questionnaire sent out to the members of the American Economic Association showed a strong opinion against the policy.[8] A questionnaire sent out under private auspices to the members of the American Economic Association showed an overwhelming opinion against price fixing.[9]

One of the most interesting experiments in resale price maintenance is provided by the State of California. In 1931 California passed an act practically identical with the Capper-Kelly bill which had been introduced into Congress regularly for some years. In 1933, the California law was amended to be binding on third parties. The drug Trade, which was one of the main agencies in obtaining the law, quickly took advantage of its provisions. The actual results of the law, particularly on the level of prices, have been vigorously debated but it seems to be true in the drug trade at least, that on balance certain retail prices have increased more than they have decreased since the act was passed.[10]

In Canada, the legal position of the policy as a policy is obscure; if approval of the policy has not been given, it has not yet been unequivocally condemned, although certain cases involving it have been. There is no statistical information relating to the consumers' attitude and the only trade data available is in the tobacco industry where the answers to the questionnaire sent out by the Imperial Tobacco Company indicated that the distributors were completely in accord with the practice. Trade journals refer to it from time to time but there is little public discussion. It is possibly true that the retail merchants in general, outside of specific lines, are not as interested in the problem as they once were and do not consider it as significant as they once did.

From this brief outline of the situation in the two countries of most interest to Canada, it can be seen that the two countries have followed different policies although both policies

---

[5] *Hearings on Senate 100* (Miller-Tydings bill) (Washington: Government Printing Office, 1937), March 4, 1937, p. 25.

[6] *Message from the President of the United States* (Washington: Government Printing Office, 1937), Senate Document 58, 75th Congress, 1st Session.

[7] *Journal of Commerce* (New York), August, 1937. In accepting the bill the President stated ". . . but I have distinct hesitation in approving the rider which weakens the anti-trust laws."

[8] Federal Trade Commission *Resale Price Maintenance* Part I, p. 24.

[9] C. W. Doten, *What Economists Think of the Kelly Resale Price Bill.*

[10] E. T. Grether "Experience in California with Fair Trade Legislation Restricting Price Cutting". (1936) 24 *California Law Review* 640; M. Merrill, E. T. Grether, and S. S. Kittelle *Restriction of Retail Price Cutting with Emphasis on the Drug Industry* Work Materials No. 57 (1936), Trade Practices Studies Section, Division of Review, National Recovery Administration, pp. 430; this is a very extensive survey.

were based on the same desire — to maintain a competitive economic system. There is evidence that a period of questioning the policy is now going on in the United States and that this may result in changes in the public attitude; or it may run its course and public policy may resume its previous direction. In the United Kingdom, there is some evidence that its policy is also being considered, but no evidence of a changed policy is yet discernible.

As usual, Canadian policy lies between those of the United Kingdom and the United States. The legal position of resale price maintenance on a manufacturer's product, maintained by his own independent action, has not been clearly defined. Certain cases have been declared against public policy but the practice itself has not been finally passed on. Control of resale prices by a combination of manufacturers, jobbers and retailers was condemned following the investigation under the Combines Investigation Act into the Proprietary Articles Trade Association.[11] If the right to maintain prices by any means is not as clear and as extensive as in Great Britain, there certainly has been more freedom allowed to manufacturers in Canada than previously allowed to manufacturers in the United States.

---

[11] The Dominion of New Zealand took a somewhat similar position, see New Zealand *The Proprietary Articles Trade Association, Report of the Committee of Inquiry, Minutes of Proceedings and Evidence* (Wellington: Government Printer, 1927), pp. 164.

CHAPTER IV

# THE TOBACCO INDUSTRY IN CANADA

Although those associated with the tobacco industry have a detailed knowledge of its organization, it may be well at the outset to give a very brief description of the tobacco industry (including distribution) in Canada, outlining its salient points. The entire industry may be divided roughly into four groups:

(1) Growers.
(2) Leaf Purchasers and processors.
(3) Manufacturers.
(4) Distributors.
 (*a*) wholesalers or jobbers.
 (*b*) retailers.

Some companies and individuals may perform two or more of these functions but these four functional divisions to the industry may be distinguished.

## GROWERS

The total value of the Canadian tobacco crop to tobacco farmers runs around seven million dollars per year which makes it an important source of agricultural income, especially as it is concentrated to a considerable extent. The bulk of the tobacco grown in Canada is produced in the province of Ontario.[1] The Quebec crop is of less commercial significance than that of Ontario. In 1937, Ontario production was estimated at 62,000,000 pounds and Quebec production at 8,925,000 pounds.[2] Ontario produces mainly flue-cured and burley tobaccos; other types are grown but these two represent nearly the whole of the commercial crops and are of main significance for the present purpose. Burley tobacco is grown mainly in the Essex and Kent district while the flue-cured tobacco is grown in Norfolk, Oxford and Elgin counties.[3]

Tobacco is a sub-tropical plant which appears very susceptible to climate and soil and the quality of the leaf is very dependent upon these two things. Naturally there are serious climatic difficulties in raising this sub-tropical plant in Canada and crop hazards must be relatively great. The soils of the Essex-Kent area are heavier and are more suitable for burley than for the flue-cured type. The Norfolk-Oxford-Elgin section—known as the new section—has a light, sandy soil which is suitable for the cultivation of the light, bright leaf required in cigarette making. The area suitable in soil and climate for flue-cured cultivation appears limited and from the evidence is not suitable for other types of agriculture. In other words, there is little in the way of an alternative use of the flue-cured tobacco lands except for general or subsistence farming.

The flue-cured tobacco farm is generally around one hundred acres of which approximately thirty to thirty-five acres are sown yearly to tobacco—there is a two- or three-year rotation—with rye or some other crop suitable for ploughing in as fertilizer. The share-plan system of farming is general, that is the farm is rented by the owner and operated by the tenant. The expenses and income are divided roughly on a fifty-fifty basis, each party—landlord and tenant—having certain responsibilities. This system gives both groups a direct and immediate interest in production and prices. Of course, some farms are owned outright by the operator but the weight of evidence seems to be that most of the cultivators are tenants. Unlike other forms of agriculture, company farming seems to be common in the flue-cured industry and there are several incorporated companies which own and operate large holdings. The company usually divides its holdings into farms, and rents them on the same basis as does the individual landlord.[4]

---

[1] Relevant statistics of tobacco production in Canada are given in Appendix II.

[2] A summary estimate of tobacco production in Canada, 1937, issued by the Tobacco Division, Dominion Experimental Farms, reported in the *Globe and Mail*, November 20, 1937.

[3] T. G. Major, *Trends in the Canadian Tobacco Industry 1920-1934* (Ottawa: Department of Agriculture, 1936), pp. 32, gives a good account of the tobacco industry in Canada.

[4] Special Committee of the House of Commons on Price Spreads *Proceedings and Evidence*, Vol. I, p. 1183 *et seq.*

The development of the tobacco growing industry in Ontario particularly in the flue-cured section, has been a post-war phenomenon. Until 1928, the acreage devoted to flue-cured tobacco was not large and prices were, compared with later ones, satisfactory. Since 1922 or 1923 there has been a big increase in the price of tobacco lands, a factor of very great economic significance. Beginning in 1928, there has been a great increase in output and a very sharp fall in prices; these circumstances have created difficulties for growers and have contributed to considerable unrest among them. Feeling that the individual grower was at a disadvantage in selling to the large producer, the burley growers and the flue-cured growers organized under the Natural Products Marketing Act. The organizations formed under this Act operated until the Act was declared *ultra vires* in 1936 by the Supreme Court of Canada. This judgment was confirmed by the Judicial Committee of the Privy Council in 1937. In 1936 the provisions of the Ontario Companies Act were used and a Burley Tobacco Marketing Association of Ontario, and a Flue-Cured Tobacco Marketing Association of Ontario were formed with two classes of members—producer members and buyer members.[5] The directors of the marketing associations, representing both groups, were to settle the price and conditions of marketing each year's crop and determine the acreage to be planted by producer members, the latter a very important function. In general the associations have functioned fairly satisfactorily but the large Ontario crop of 1937 (approximately 53,000,000 pounds of flue-cured alone) appears to have created a problem and considerable dissatisfaction with the established average price of 24½ cents has been expressed by some growers.

## LEAF BUYERS AND PROCESSORS

There were in 1935, in all, twenty-three concerns in Canada which could be classified in this category. Thirteen of these were in Quebec, eight in Ontario and two in British Columbia. The largest plant in Quebec is the Yamaska Valley Co-operative. Of the concerns in Ontario, seven are subsidiaries or associates of the tobacco manufacturers (domestic and British). These concerns handle the bulk of the Ontario tobacco crop; independents are of lesser importance. The fact that the purchasing and processing of the Ontario crop is carried on by concerns allied so closely with the manufacturers has added to the integration of the two processes. It may be added that the system of farm marketing in Canada is generally the barn-buying method rather than the auction method of the United States.

Because unmanufactured leaf tobacco can be sold without paying the excise, a considerable trade, particularly in the province of Quebec, has grown up in this form of tobacco. It has created something of a problem for the manufacturing end of the industry but the privilege seems to be regarded as important by the Quebec farmers and suggestions to end it have brought forth much opposition.[6]

## MANUFACTURERS

In 1935, Canadian tobacco manufacturers paid out approximately $19,700,000 for materials of which $15,000,000 was for raw leaf. Of this nearly $6,000,000 was paid for imported leaf and over $9,000,000 for Canadian leaf. All told, 39,000,000 pounds of raw leaf was used in the industry of which 31,000,000 was of Canadian origin. Excluding excise, the value (at the factory) of all manufactured tobacco was $39,000,000. Nearly 6,000 employees were engaged in the industry. From this, it can be seen that the tobacco manufacturing industry in Canada is of substantial importance.[7]

Although the statistics for 1935 show 116 plants engaged in the manufacture of tobacco products, the bulk of these are very small and relatively unimportant units. Of the 116 plants reported in the industry, 58 made cigars only, 37 made tobacco only, 10 made tobacco and cigarettes, 5 made tobacco and cigars, 1 made snuff only, 2 made tobacco and snuff, 2 made tobacco, cigars, and cigarettes, and 1 made tobacco, cigars and snuff. Summarizing this, only 12 made cigarettes which product accounts for over half the value produced by the industry; 57 made tobacco which is the next most important branch of the industry. But

---

[5] *By-Laws, Flue-Cured Tobacco Marketing Association of Ontario* (Simcoe: 1936), pp. 15; *Burley Tobacco Marketing Association of Ontario, By-Laws* (Chatham: Shepherd Printing Company, 1936), pp. 13.

[6] Special Committee of the House of Commons on Price Spreads, op. cit., Vol. II, pp. 1437-8; 1687-9.

[7] Dominion Bureau of Statistics *Report on the Tobacco Industries in Canada 1935,* (Ottawa: King's Printer, 1937), pp. 1 *et seq.* The statistics in these reports are for *plants* not *firms,* consequently, the degree of control in the industry is not properly reflected.

it is clear that only a small number of plants were concerned with cigarettes; of these plants doubtless some were under a common control so that the number of concerns making cigarettes is even smaller.[8]

The relative importance of the different tobacco products is indicated by their volume of output and Table I shows the relevant figures. As excise taxes are included in the detailed figures, the influence of cigarettes may be accentuated somewhat, but nevertheless it is much the most important division of the industry.

TABLE I.—OUTPUT OF TOBACCO PRODUCTS IN CANADA IN 1935*

| Products | | Quantity | Selling Value at the Factory (including excise duties) |
|---|---|---|---|
| | | | $ |
| Chewing tobacco, plug | pound | 2,628,821 | 2,197,527 |
| Chewing tobacco, cut | " | 4,334 | 4,640 |
| Chewing tobacco, twist | " | 262,856 | 224,799 |
| Smoking tobacco, plug | " | 974,247 | 939,290 |
| Smoking tobacco, cut | " | 18,153,718 | 18,606,932 |
| Smoking tobacco, twist | " | 210 | 147 |
| Smoking tobacco, leaf | " | 674,848 | 116,062 |
| Snuff | " | 773,692 | 1,045,862 |
| Cigars | M | 120,508 | 5,158,629 |
| Cigarettes | M | 5,324,953 | 41,526,276 |
| All other products | | – | 9,358 |
| VALUE, INCLUDING EXCISE DUTIES | | – | 69,829,522 |
| Excise duties paid on these products | | – | 30,725,647 |
| NET VALUE OF PRODUCTS | | – | 39,103,875 |

*Dominion Bureau of Statistics, *op. cit.*, p. 5.

The larger manufacturers, or their subsidiaries, produce practically all forms of tobacco products, but the cigarette division of the business is probably most important to the larger producers. Most of the smaller producers have special lines—cut tobacco, etc.—which are their main interest. The larger companies have a national market while the smaller ones have distinctly local markets.

The degree of concentration in the industry is further indicated by the volume of production and the capital investment per plant. The following tables, Tables II and III, give the relevant data:—

TABLE II.—PRODUCTION OF TOBACCO PRODUCTS BY SIZE OF PLANT, 1935*

| Establishments Having a Production of:— | Establishments | Total Production | Average Production per Establishment |
|---|---|---|---|
| | No. | $ | $ |
| Under $50,000 | 94 | 709,448 | 7,547 |
| $50,000 to under $100,000 | 6 | 417,732 | 69,622 |
| $100,000 to under $200,000 | 3 | 333,419 | 111,140 |
| $200,000 to under $500,000 | 3 | 1,204,319 | 401,440 |
| $500,000 to under $1,000,000 | 3 | 2,300,493 | 766,831 |
| $1,000,000 to under $4,000,000 | 5 | 34,138,464 | 4,876,923 |
| $4,000,000 and over | 2 | | |
| TOTAL AND AVERAGE | 116 | 39,103,875 | 337,102 |

*Dominion Bureau of Statistics, *op. cit.*, p. 11.

[8] *Ibid.*

TABLE III.—CAPITAL INVESTMENT IN TOBACCO MANUFACTURING, 1935*

| Establishments Having a Capital Investment of:— | Establishments | Total Capital | Average Capital per Establishment |
|---|---|---|---|
| | No. | $ | $ |
| Under $50,000 | 91 | 762,724 | 8,382 |
| $50,000 to under $100,000 | 9 | 585,099 | 65,011 |
| $100,000 to under $200,000 | 4 | 604,242 | 151,061 |
| $200,000 to under $1,000,000 | 4 | 2,700,691 | 675,173 |
| $1,000,000 to under $4,000,000 | 4 | 6,857,340 | 1,714,335 |
| $4,000,000 and over | 4 | 46,668,417 | 11,667,104 |
| TOTAL AND AVERAGE | 116 | 58,178,513 | 501,539 |

*Dominion Bureau of Statistics, *op. cit.*, p. 11.

The Imperial Tobacco Company (and its subsidiaries) does about seventy-five per cent of the manufacturing trade in tobacco; W. C. Macdonald Company, Incorporated, ranks second. There are, in addition, five other companies which, while relatively small, are important; so that the seven largest manufacturing companies do well over ninety per cent of the tobacco manufacturing business of Canada.[9]

Although all Canadian manufacturers of tobacco products have not been equally successful, the larger companies have—in contrast with most businesses—done well since the twenties. For example, since 1930 the earnings per share of the Imperial Tobacco Company varied only between 54 and 58 cents. An important factor in this situation has been the persistent and continuous shift from the use of imported leaf to the domestic leaf. As the price of domestic leaf would not on the average be more than one-half the cost of imported leaf, the financial importance of the shift is obvious. The following table, Table IV, gives some suggestion as to the extent of this change:—

TABLE IV.—CANADIAN AND FOREIGN LEAF USED IN MANUFACTURE IN CANADA*

| Calendar Year | Canadian | Foreign | Total | Per cent of Canadian |
|---|---|---|---|---|
| | In thousands of pounds | In thousands of pounds | In thousands of pounds | |
| 1920 | 8,226 | 18,428 | 26,654 | 30·9 |
| 1921 | 9,962 | 18,055 | 28,017 | 35·6 |
| 1922 | 19,262 | 16,816 | 36,078 | 53·4 |
| 1923 | 15,260 | 15,235 | 30,495 | 50·0 |
| 1924 | 16,779 | 14,976 | 31,755 | 52·8 |
| 1925 | 16,199 | 15,484 | 31,683 | 51·1 |
| 1926 | 19,315 | 17,309 | 36,624 | 52·7 |
| 1927 | 20,685 | 16,485 | 37,170 | 55·6 |
| 1928 | 22,067 | 17,510 | 39,577 | 55·8 |
| 1929 | 25,559 | 17,673 | 43,232 | 59·1 |
| 1930 | 20,337 | 17,302 | 37,639 | 54·0 |
| 1931 | 19,007 | 14,963 | 33,970 | 56·0 |
| 1932 | 21,038 | 12,740 | 33,778 | 62·0 |
| 1933 | 23,750 | 10,925 | 34,675 | 68·5 |
| 1934 | 26,928 | 9,173 | 36,101 | 74·6 |
| 1935 | 31,252 | 7,557 | 38,809 | 80·5 |
| 1936 | 33,093 | 5,972 | 39,065 | 84·7 |

*Dominion Bureau of Statistics, *Census of Industry 1920-1934 and Quarterly Reports of Stocks and Consumption of Unmanufactured Tobacco, 1935-36*. (Ottawa: King's Printer).

The manufacturers sell to jobbers and to selected retailers, who are known as "direct retailers" and who obtain terms somewhat better than the indirect retailer who buys from the jobber. The Imperial Tobacco Company owns wholesaling establishments as well as its

[9] Major, *op. cit.*, p. 16

retail outlet, the United Cigar Store Chain. The larger manufacturers maintain a staff of salesmen and advertising men who solicit orders (but do not deliver), and who assist the dealers in their display efforts.

(*a*) *Wholesalers*

According to the information supplied by the Imperial Tobacco Company there are approximately 1,130 wholesalers or jobbers of tobacco products in Canada, divided as follows: tobacco and confectionery 420, tobacco and groceries 398, tobacco and fruit 68, tobacco and drugs 22, all others approximately 230. "All others" covers outfitters, wholesale hardware, stationery, district general stores, and fur traders. It is difficult to obtain comparable numbers and divisions of wholesalers of tobacco products from the Census statistics but this is to be expected owing to different classifications and to lack of detail. The Census statistics show only 264 wholesale concerns under the heading of Tobacco Products. Of these, 4 handled cigars only, 3 tobacco only, 55 cigars, cigarettes and tobacco, and 202 tobacco products and confectionery.[10] Because the concerns wholesaling tobacco products carry other lines such as confectionery, or carry tobacco as a part of a general grocery wholesaling business, not only does each individual tobacco product, but tobacco products generally become tied up in the general problem of overhead costs. Table V shows the amount of net sales reported for each class of jobber.

TABLE V.—WHOLESALE TOBACCO TRADE, 1930*

| | |
|---|---|
| Food Products (N.E.S.) (Confectionery, etc.) | $ 3,313,000 |
| Wholesale Grocers | 12,488,000 |
| Wholesale Tobacconists | 24,846,000 |
| Other wholesale Merchants | 591,000 |
| Total Sales reported by Wholesalers | 41,238,000 |

**Census of Canada 1931* Vol XI "Merchandising and Services" Part II, p. 564.

This table, of course, represents only the regular wholesale channels and does not cover the entire sale of tobacco products. However, it probably does represent fairly well the relative proportion of the business done by the different groups of wholesalers. Doubtless "direct" sales, etc., by manufacturers account for most of the balance.

In general, wholesalers buy the manufacturers' lines directly from the tobacco manufacturers (private brands are negligible), maintain stocks, salesmen, trucks, etc., and distribute to the retailer. Sometimes the wholesaler carries on a retail trade too but generally speaking the wholesale trade is distinct from the retail business.

A fairly recent development has been the "truck warehouse" by which is meant a large truck or transport which carries a fairly complete stock of goods. The use of this device permits delivery to take place as soon as the order is given and is particularly effective in the outlying districts. As yet only a small part of the wholesale business in tobacco products is done in this manner.

(*b*) *Retailers*

The retail merchandising of tobacco products in Canada is carried on through many channels of which the specialized tobacco stores or stands and drug stores are the most important in volume of sales. But substantial sales of tobacco products are made in grocery stores, country general stores, barber shops, restaurants, food stands, etc.

There are in Canada approximately 60,000 retails outlets handling tobacco products and, as indicated above, these range from the specialized city outlet to the country roadside stand. From the evidence available[11] it seems clear that there is only a relatively small number of these outlets—possibly two or three hundred who can be described as full time retailers of tobacco products.[12] Most tobacco retailers carry other lines of trade and tobacco is subsidiary to the main business carried on. Tobacco products thus range from being the main trade for the few specialized tobacco stores to being merely convenience goods with the many small corner grocery stores. Accordingly, just as in the case of the wholesale

[10] *Census of Canada 1931* Vol XI "Merchandising and Services" Part II, p. 564.

[11] *Census of Canada 1931* Vols. X and XI are concerned with retail and wholesale distribution. The only complete survey of retail trade in Canada was made for the year 1930; in general this is the last year for which full materials are available.

[12] The Imperial Tobacco Company suggested that there might be approximately 5,000 such, but the Census data does not show this number.

trade, the problem of retail profits on tobacco becomes involved with overhead costs. The following table, Table VI, gives the relevant census statistics as reported under the head of tobacco.

TABLE VI.—SALES OF RETAIL TOBACCO DEALERS IN CANADA, 1930*

| — | Number of Stores | Net Sales(†) |
|---|---|---|
| Tobacco stands (hotels, etc.) | 747 | $ 5,846,200 |
| Tobacco stores with newstands | 568 | 7,207,900 |
| Tobacco stores | 471 | 10,683,500 |
| Tobacco stores with foods | 634 | 6,965,200 |
| | 2,420 | $ 30,702,800 |

* *Census of Canada, 1931* Vol. X, Part I.
(†) Includes other than tobacco products.

While the specialized tobacco retailers are a small proportion of the total number of retailers selling tobacco, it is clear that the specialized dealers account for a good proportion of the total sales—so far as it can be judged. Table VII shows the tobacco stores classified according to volume of sales; three-quarters of the total number had total sales under $20,000.

TABLE VII.—RETAIL TOBACCO STORES, CLASSIFIED ACCORDING TO NET SALES, 1930*

| — | Total Reported | Under $5,000 | $5,000 to $9,999 | $10,000 to $19,999 | $20,000 and over |
|---|---|---|---|---|---|
| Tobacco stands | 747 | 359 | 213 | 119 | 56 |
| Tobacco stores with newstands | 568 | 92 | 179 | 202 | 95 |
| Tobacco stores | 457 | 104 | 62 | 81 | 210 |
| Tobacco stores with foods | 630 | 236 | 181 | 136 | 77 |
| News dealers (tobacco and confectionery) | 275 | 89 | 84 | 71 | 31 |
| | 2,677 | 880 | 719 | 609 | 469 |

* *Census of Canada* Vol. X, Part I, pp. 52-53.

Table VIII shows the number of tobacco stores and stands by provinces.

TABLE VIII.—RETAIL TOBACCO STORES AND STANDS BY PROVINCES, 1930*

| — | Number | Net Sales |
|---|---|---|
| Prince Edward Island | 3 | $ 14,000 |
| Nova Scotia | 51 | 824,000 |
| New Brunswick | 43 | 609,000 |
| Quebec | 571 | 7,902,000 |
| Ontario | 1,290 | 15,407,000 |
| Manitoba | 73 | 981,000 |
| Saskatchewan | 89 | 946,000 |
| Alberta | 102 | 1,119,000 |
| British Columbia | 198 | 2,901,000 |
| | 2,420 | $ 30,703,000 |

* *Census of Canada* Vol. X, Part I, obtained from provincial tables.

The following table, Table IX, which was taken from the census data, shows roughly the general importance of the sales of tobacco products for the various types of retailers. This figure is averaged from the provincial figures and so some tolerance must be allowed.

But it is interesting and valuable since it gives some idea — the best available — as to the rough importance of tobacco sales to each class of retailer. Of course, the situation varies with individual dealers.

TABLE IX. — TOBACCO SALES AS A PERCENTAGE OF TOTAL SALES *

| | |
|---|---|
| Food Groups — | |
| Bakeries and Bakery Products (v) | ·2 |
| Confectionery Stores | 4·1 |
| Fruit and Vegetables | 1·8 |
| Grocery Stores (without meat) | 3·0 |
| Grocery Stores (with meat) | 2·8 |
| Meat Markets (with groceries) | ·5 |
| Country General Stores | 3·5 |
| Grocery with other merchandise | 2·8 |
| Without grocery (v) | ·2 |
| General Merchandising Group — | |
| Department Stores (v) | 1·1 |
| G. M. Stores — with food | 3·8 |
| G. M. Stores — without food (v) | 10·2 |
| Restaurants, Cafeterias, and Eating Places — | |
| Cafeterias only | 3·7 |
| Cafes (including confectionery) | 3·9 |
| Lunch Rooms | 10·3 |
| Lunch Counters and Restaurants (10 seats and under) | 16·9 |
| Tea Rooms and Light Lunches (v) | 7·3 |
| Other Retail Stores — | |
| Book Stores (v) | ·3 |
| Drug Stores | 10·1 |
| Tobacco Stores with news stands | 54·6 |
| Tobacco Stores (Smokers' supplies would add 9·6 per cent) | 90·1 |
| Tobacco Stores with food | 61·5 |

* *Census of Canada 1931* Vol. X, Part I, Table 27, pp. 136-165.
(v) Variously reported only.

In general, the tobacco retailer buys his products from the jobber or wholesaler but some of the trade, approximately 5,000, have the privilege of buying directly from the manufacturer. These direct buyers, of course, get better terms from the manufacturer than indirect retailers from the jobber;[13] margins, of course, vary from product to product, but it is of considerable competitive advantage to be on the direct list.

Tobacco retailing in Canada is carried on mainly by independent units but the volume of sales by tobacco chain stores is important. In 1930, there were 9 companies, operating 215 stores, and having net sales of approximately $7,800,000. This was approximately 25 per cent of the total sales made by tobacco stores and stands. In 1935 the number of companies reported was 11, the number of stores 230, and net sales about $5,750,000. When the total sales of tobacco products by all retail outlets is considered the proportion of business done by the chain stores becomes smaller. The United Cigar Stores, Ltd. owned by the Imperial Tobacco Company, is the largest and most important chain. In 1935 it operated 170 stores and 248 agencies and its sales were approximately $4,222,000.

This brief outline of the tobacco industry and trade is not intended to be a complete one but it may bring out some of the salient features of the business which will be relevant and important in the analytical sections of this survey.

[13] Imperial Tobacco Company, Folder No. 9, (10).

CHAPTER V

## THE MANUFACTURER AND RESALE PRICE MAINTENANCE

In general it appears that the Canadian tobacco manufacturers favour resale price maintenance and indeed some of them have been active in its support. Many reasons contributes towards this attitude and they vary with each manufacturer. For the small established concern, the system means an umbrella against the worst type of storm which the business world knows — vigorous price competition. The interest of the large manufacturer is not quite so obvious and is usually based on the fact that competition is cleaner and that the trade is stabilized as a result.

Past experience, particularly in the United States, seems to show, broadly speaking, that manufacturers in general are less interested in the problem that the distributors. Usually it is the latter who are most concerned and most active, and the attitude of the manufacturer may be more a reflection of his connection with, and desire for, the good will of the distributors than any real conviction on the matter.[1] It seems clear from experience in the United States that systems of resale price maintenance, accompanied by strong distributor associations, may put the manufacturer in an uncomfortable position by forcing wider margins.[2]

There is at this point a certain clash of interest between the two groups. The manufacturers desire the good will of the distributors and will do what they can to obtain and keep it. Wide margins are generally the most effective way of doing this. But the manufacturers' interest is also in having a low price for the commodity. Consequently, there is a clash of interest which will be settled according to the relative strength of the two groups. This is the important point. There is ample evidence in the United States that in certain lines the distributors have been able to coerce the manufacturers.[3] In the Canadian tobacco industry, the manufacturers are in the dominant position — a factor of great importance and one which contributes to their satisfaction with the system.

Although the Canadian tobacco manufacturers have no trade association, there seems to be a uniformity of policy and of certain prices. In principle, every manufacturer sets his own price, margins, etc., but actually, the price and margins for cigarettes — the product most easily compared—show a uniformity. The same is possibly true for cut tobacco and other products but comparison is more difficult. Thus the Canadian experience towards uniformity of all manufacturers' prices and margins under price maintenance conforms with the tendency elsewhere.

Before analysing the effects of price maintenance upon the Canadian manufacturer of tobacco, it is desirable to point out certain general considerations which apply to the manufacturing part of the Canadian tobacco industry. In the first place, the general evidence available indicates that the business of manufacturing cigarettes, and to some extent other tobacco products except cigars, is one in which the optimum size of the plant—that is with respect to technical efficiency and unit costs—is reasonably large. This is the conclusion arrived at for the American industry[4] and there is no reason why it should not be true in Canada also. Because the cigarette manufacturing unit is large, it seems that any newcomer to the business must be prepared to make a large capital investment. The use of specialized and expensive machinery, the capacity to absorb obsolescence, and the use of the most efficient plant layout are among the relevant factors, which, of course, are familiar to the tobacco maufacturer. Of course, it is possible for small competitors to spring up and to continue because of some peculiar advantage; but quite clearly whatever may be their peculiar advantages, they have the definite handicap of not being technically at the optimum size.

Size of the enterprise may be a more important factor than size of the optimum plant. There are so many financial and administrative economies to be obtained by a large enter-

---

[1] See E. T. Grether "Distributive Trades and Control of Price Competition", *Law and Contemporary Problems* (School of Law: Duke University), Vol. IV, No. 3 (June. 1937), p. 384, for a discussion of this aspect.

[2] *Resale Price Fixing Under the Fair Trade Laws* Special Report by Business Week, August 28, 1937 (New York: McGraw-Hill); see also *Trade Regulation Review* No. 3, March, 1937.

[3] Grether, *loc. cit.*, p. 384.

[4] Reavis Cox, *Competition in the American Tobacco Industry* (New York: Columbia University Press, 1933), Chapter IV.

prise that there are decided advantages to the large firm.[5] This aspect is important in Canada just as it is in the United States but in Canada such economies are available mainly to the one large enterprise—the Imperial Tobacco Company.

The second consideration which is extremely important is the tremendous outlay which is necessary in order to advertise a new tobacco product, particularly a new brand of cigarettes. The Lorillard Company for example, in launching and maintaining its Old Gold brand, is reported to have done so at a cost of millions of dollars.[6] On a smaller scale the same condition holds in Canada and consequently, a new company in the cigarette,[7] or even in the cut tobacco field, would need extensive resources to carry on the advertising compaign required to launch and to maintain its products. There have been many brands of cigarettes and cut tobacco launched in Canada but the inability of the sponsors to continue to pay out the necessary funds until the sales were firmly and profitably established has meant the ultimate extinction of the brand. The fact that during the period of growth, the situation in part depends upon the actions of the established companies—whether or not they will "fight" the new brand—adds to the uncertainty and risk. Many new brands call forth very little re-action from the larger companies because they judge, for many and various reasons, that the situation will take care of itself. But if they concluded that the new brand might be a real success, their competitive actions might be much more vigorous and effective. The company with limited resources can work only in a limited territory and depends entirely on the results in that territory. Its large competitor has all Canada to draw on and can put resources into any area and it is not completely dependent on the results in that area.

These considerations are particularly important in a market in which the consumption of cigarettes or tobacco products generally is stabilized or is growing slowly. If the market is pretty well stabilized then it means that any newcomer must obtain his volume of sales mainly by cutting into the sales of the existing concerns. Although this result may be possible for a short time and to a small extent, it is obvious that, if it comes to a battle for markets, the Imperial Tobacco Company and possibly W. C. Macdonald with their extensive resources would decide the outcome.

It may be pointed out that in the United States, the successful cases of launching new brands of cigarettes and putting them among the first three sellers came at a period when the taste of the cigarette consumer was changing, or was being changed, and when also there was a very great expansion in the consumption of cigarettes. Consequently, the last successful new brand had the opportunity of getting its volume of sales largely from new business.[8] Similar conditions seemed to prevail during the development of the one important independent cigarette company in Canada, the W. C. Macdonald Company. This company established itself in the cigarette field at a time when the consumption of cigarettes in Canada was increasing substantially, and when fortuitous events such as war, taxation and tariffs affected the competitive brands. It is also possible that the policy of the Imperial Tobacco Company would not be the same in another similar situation. Consequently, it is doubtful if such fortuitous circumstances would again arise to assist a newcomer in the cigarette field.

It is doubtful if cigarette and tobacco consumption will continue to increase at the rate it has during the last decade mainly because the acceptance of women smoking has meant a development of the largest potential cigarette market available. As a repetition of this development seems improbable, it may be concluded that the rate of increase is likely to be correlated with the growth in population. As this is likely to be at a slower rate than in the past, no great increase in the *rate* of growth of cigarette consumption is likely to occur. The *absolute quantity* of cigarettes consumed will, of course, fluctuate with cyclical variations in business and will show a secular trend upward; but it will probably be at a slower rate and with less room for newcomers. It may be assumed then, that the cigarette market of the future is likely to be a more stabilized one.

For these very substantial reasons, it may be concluded that entrance to the manufacturing part of the tobacco industry is difficult, and that growth of the industry is more

---

[5] *Ibid.*, This author gives this aspect more weight than the plant aspect.

[6] Cox, *op. cit.*, pp. 66-7.

[7] The Canadian manufacturer of "Spuds" agreed to spend $25,000 in the year ending April 30, 1934 in advertising this brand which, because of American advertising, is well known in Canada. This expenditure represented the bulk of the company's advertising appropriation but did not permit much of a campaign. Special Committee of the House of Commons, *Exhibit No. 138*, Financial Statement of Rock City Tobacco Company for year ending December 31, 1933, p. 7.

[8] Cox, *op. cit.*, pp. 63 *et seq.*

likely to come from extension of the existing facilities than from the advent of new firms. As the cigarette division is fundamental to any manufacturer ambitious of size, and as the Canadian market for other forms of tobacco is small relatively, this conclusion may be accepted for the tobacco manufacturing industry in general.

In Canada, then, the experience seems to be that the number of tobacco manufacturers is not increasing and that there is a growing concentration of the volume of business done by the largest firms. In contrast with many United States' industries,[9] where the *proportion* of business done by the largest company is decreasing, the Imperial Tobacco Company appears to be maintaining its proportion of the Canadian tobacco business. It may, therefore, be concluded that the existing manufacturing firms in the tobacco industry in Canada are in a monopoly position which in all probability cannot be successfully challenged by any new domestic producer. Because of this conclusion it is unnecessary to analyse the effects of resale price maintenance upon the numbers of tobacco manufacturers, except as it may tend to hold established businesses in existence.

With these general considerations in mind the analysis may be proceeded with. The immediate test applied in the following analysis of the effects of resale price maintenance on the tobacco manufacturer is the economic or financial one; in other words, does this practice increase or decrease the net profits of the tobacco manufacturer. There are other broader aspects of the problem which are not immediately relevant and which can be discussed elsewhere. The vital point in this immediate connection and from the viewpoint of the manufacturer is this: will the cutting of retail prices on tobacco products force lower prices from the manufacturer? If the jobbing trade cannot force price concessions from the manufacturers, then the situation is very different from one in which concessions can be forced.

Undoubtedly, the best answer to this question should be that given by the manufacturers themselves and as a matter of policy they will have to decide it. But certain considerations may be mentioned here. In the first place, it seems true that the general policy in the Canadian tobacco manufacturing industry is "follow the leader"—the leader being the Imperial Tobacco Company. There is, therefore, a certain weight against the idea that other manufacturers will even under pressure step out of line. The jobbing trade may be able to exert great pressure but it may be that the Imperial Tobacco Company has potentially even greater pressure. This is, of course, subject to some modification where non-economic motives influence any competing manufacturer; but even such a manufacturer cannot be completely heedless of economic results. In the second place, it is agreed that the main demand for individual brands comes from the manufacturers' advertising and other "demand creating" efforts. The trade—certainly in Canada—is not in a position where it can effectively "push" some manufacturers' lines—certainly not those of the smaller companies—to the exclusion of others. Thus the position of the trade in tobacco is much weaker than in most lines. The dominance of Imperial products in the volume of retail sales makes them necessary to every dealer, and the Company has great influence as a result. In other words even if a competing manufacturer dropped his selling price to the trade, the Imperial Tobacco Company would be in a strong enough position to maintain its price with very little substitution taking place because of jobbers pushing competing lines. It may be added that some of the trade gave it as their opinion that the trade would not be able to force concessions from the manufacturers. There is further evidence of this in the way that the Canadian manufacturers altered slightly the margins to the trade in 1934 when the reduction in the excise made new price schedules necessary.[10] These considerations lead to the conclusion that retail price cutting would not necessitate cutting by the manufacturers.

It may be further suggested that if, under present conditions of resale price maintenance, the trade cannot force wider margins from the manufacturers, it is improbable that in the absence of this price policy they could force such concessions. Experience in the United States, under the various state Fair Trade acts, suggests that the margins given to the trade by manufacturers are determined by the relative economic strength of the two groups and not by the existence or absence of price maintenance.

That it is possible for the manufacturers to maintain firm prices in the face of cut prices by distributors is clearly indicated by the experience in the United States. It is generally agreed by those in the distributing trade that retailing and wholesaling of tobacco products in the United States is subject to price cutting and that in general no resale price

---

9 A. R. Burns, *Decline of Competition*, (New York: McGraw-Hill, 1936), Chapter III.

10 Because the rate of excise was reduced, new price lists had to be made although the dealers percentage of mark-up on selling prices increased somewhat, the *absolute* profit per unit of sale was decreased.

is maintained; to the trade[11] it is "chaotic", "disorganized" and so on. But there is no doubt that the manufacturers of tobacco products, particularly of cigarettes, have done relatively well in the last few years and that the disturbed position of the distributing trade does not seem to have affected the manufacturer's position. The changes in the manufacturer's price of cigarettes to the trade indicates a certain strength in the manufacturer's position. It would seem then, that the general conclusions outlined above, are supported by the empirical results in the United States.

On the other hand, it should be stated here that the officers of the Imperial Tobacco Company gave it as their opinion that the manufacturers would not be able to resist the jobbers' demands; that some weak manufacturer would give way and then the whole price structure would go. But even if this is the correct answer it is only a partial one; there still remains the question of the ultimate effects. The question of whether or not the manufacturer's price structure should be lowered is not relevant here; but from the viewpoint of public policy, it might not be irrelevant.

The following analysis of the economic effects of price maintenance on the tobacco manufacturer is divided into two sections; the first assumes that the manufacturer's price can and will remain unchanged, the second assumes that it will be changed. Because the first assumption is that the manufacturer's price structure remains unchanged, there is no reason for any repercussions from the presence or absence of resale price maintenance upon the labour force or upon the tobacco growers, and thus no necessity for assuming any change from conditions now existing in these fields.

Inasmuch as resale price maintenance must mean a smaller unit volume of consumption by the community, the manufacturer loses to the extent of his profits on this reduction in units of output;[12] because of the stability of his price, his position is different from the retailer and wholesaler. The manufacturer's income is directly related to the number of physical units sold. The amount of this reduction in volume is difficult to assess and to state in any quantitative terms; but there can be little doubt that the sales of tobacco products, particularly cigarettes, must be somewhat smaller at higher prices than at lower prices; the amount of the reduction in prices is, of course, important. Added sales will come from substitution, and also from greater use.

The particular form of tobacco product used is important here, for there appears to be considerable elasticity in the demand for any one form of smoking tobacco. If cigarettes were sold at lower prices it would probably reduce the sales of cigarette tobacco somewhat. But if the margin of profit for the manufacturer is greater on cigarettes than on cigarette tobacco, the manufacturers' position would be improved by increasing the consumption of manufactured cigarettes at the expense of smaller sales of cigarette tobacco. The experience of the depression shows that this matter of substitution is of considerable quantitative importance at times; in "prosperous" periods it may be of lesser importance. It is also probable that with lower cigarette prices, users will be less frugal, have more on hand for entertaining, leave longer butts and so on. All of these things are matters of habit, difficult to assess, and effective only over a period of time.

To the extent that cost of maintaining a system of price maintenance, or the cost of policing the industry, is borne by the manufacturers, there is an added cost of doing business. To what extent this is of quantitative significance it is impossible to state here but possibly the individual companies in the tobacco business have some idea of these costs themselves. However, outside of irregular contributions to trade associations, so much of this cost is mixed up with the general cost of salesmen and representatives in the field, that it must be difficult even for the manufacturers to assess accurately the cost of their policing work. It must vary with different manufacturers and must be greatest for the Imperial Tobacco Company.

The foregoing analysis is based upon the peculiar conditions applying in the Canadian industry and is not based upon general considerations which might apply to other manufacturing fields. For example, the presence or absence of private brands in the manufacturer's field is a vital point in discussing the effect of price maintenance upon the manufacturer in general. The stock argument respecting the manufacturer's position is in connection with the competition of private brands. Generally one of the main reasons for the manufacturer's interest in price maintenance is that through national advertising the manufacturer has built up a reputation for his product and the retailer, by price

[11] One of the smaller companies (Philip Morris) is endeavouring to institute price maintenance under the State of New York law.

[12] Seligman and Love, *op. cit.*, p. 418 *et seq.* suggest that limited price cutting in tobacco products may be of an advantage to the manufacturers because of the greater volume of output.

cutting, trades on this reputation and uses it as a method of advertising. By cutting prices on the standard brands, the cut-price dealer forces down the price for all dealers and the margin of profit is thus so reduced that the dealers do not try to "push" the product. The brand then falls into disrepute with the trade, so it is argued and unless the manufacturer can, by wide advertising, obtain consumer demand and force the dealers into line the brand is replaced by private or other brands. There may be considerable weight to this private brand argument in fields where there are many competing brands; but this situation does not apply in the Canadian tobacco industry where it is agreed by all in the industry that private brands are absent or negligible. Consequently, the tobacco manufacturer in Canada has no problem of brand substitution through price cutting on his products.

There is also the point that different prices for the same article tends to injure the prestige of the brand and of its owner in the opinion of consumers. This is a difficult matter to assess but it is possible that this atttitude is overcome by time; in other words, the public's long familiarity with price cutting has made them callous to the point. However, if all brands are cut, it is difficult to see the consumer's alternatives in any case.

The legal problem of brand ownership and its relationship to the physical transfer of the goods[13] is not discussed here because it is so much a matter of law, that is, a matter of determining a property right.

Considerable weight has been given to the argument that the fixed price was an essential point in maintaining the quality of the product. Whether or not trade-marks generally assist quality is an uncertain point. In general, marketing experts place weight on the point but impartial analyses, of one kind and another, of various products do not seem to support the view completely. Fundamentally, it would appear that trade-marks are concerned with vendibility rather than quality.[14] In any case, however, if the absence of resale price maintenance does not affect the selling price of the manufacturer, the matter of quality does not need to enter.

On the assumption that the Canadian tobacco manufacturers can maintain their selling prices irrespective of conditions in the trade, it is difficult to see any financial advantages to be derived from a system of price maintenance; in fact there appears to be an economic loss. The advantages would apparently depend mainly upon what may be termed intangible grounds. That is, it may be that any direct monetary losses are offset in the manufacturer's mind by other intangible gains.

It is possible that there is one important consideration of a non-price nature which may enter into the manufacturer's attitude towards price maintenance. Undoubtedly, an effective system of price maintenance means that in business language the trade is "stabilized" or is "peaceful" or some other term which describes clearly the attitude of the trade. That is, price competition is absent and the forms of competition which exist appear to the trade to be less vicious than price maintenance. Consequently, the trade generally has a different psychological attitude. It is possible that this attitude flows back and affects the manufacturer, so that a business in which there is price cutting, will be one wherein here will be complaints to the manufacturer and to his salesmen. And in general the salesmen's relations with the trade may not be as pleasant as where price competition is absent. Thus the manufacturer may have a leaning towards price maintenance because of his relationships with the trade rather than because of the profitability of the plan. It should be observed, however, that the sales officers of the Imperial Tobacco Company were not inclined to attach much importance to this possibility.

It will be recalled that the second assumption was that the manufacturer would, in the absence of resale price maintenance, be forced to reduce prices to the trade. On this basis the economic results of the price practice on manufacturers may now be analyzed. The first point is to what extent would the manufacturers' prices be cut. It is impossible to give a quantitative answer to this for it depends on many factors. It is to be expected that each manufacturer will have a different set of costs; it is impossible to state here which are the high and which are the low cost producers but the impression is that the Imperial Tobacco Company is in the low cost group. Now if the present level of manufacturer's prices gives a profit to all in the industry, a reduction in selling prices will affect the high cost producer first. If the price reductions go far enough, these high cost producers will have losses, which if continued, or extended, will drive these producers out, or force

---

[13] See R. S. Alexander, "Recent Legislation and the Price Problem", *Columbia University Quarterly*, Vol. 39, No. 2 (June, 1937), p. 105.

[14] Federal Trade Commission *Resale Price Maintenance* Part 1, p. 18. About 50 per cent of the 2,000 replies to the questionnaires sent to the consumers indicated that they regarded trade-marks as indicating quality; 30 per cent did so in a qualified way while 17 per cent indicated no reliance on trade-marks.

them to sell out. If the price cutting goes far enough, it may make losses for most of the producers and give smaller profits to the most favourably situated. But this situation has its own remedy in that, if the situation persists long enough—which need not be very long—only the low cost units will be left. This is particularly true if Imperial and Macdonalds are in the low cost group; these two companies are really the only ones which have the resources to stand such a strain.

Over a period of time the result of all this must mean a reduction in the number of tobacco manufacturing companies; it must mean the elimination of the weaker companies which are likely to be responsible for the initial price cutting. Consequently, a situation will come about where there are fewer companies, a greater willingness to follow price leadership, and an ultimate restoration of profitable prices for the remaining manufacturers. But this period of stress may create repercussions on other groups e.g. labour and growers.

From the foregoing, it may be concluded that despite the somewhat larger volume of sales resulting from lower prices, there might, on balance, be a loss of income to the manufacturers during the transition period; but ultimately their position would be restored and *improved* because of the disappearance of some manufacturers and some competition resulting in a consequent strengthening of their monopoly position.

The effects of a system of price maintenance upon workers employed in tobacco manufacturing, may be seen from an analysis similar to that which will be applied elsewhere for the tobacco growers. The schedules of wages submitted by the Imperial Tobacco Company would indicate that, for the class of labour employed, the rates of wages at least approximate going market rates; the Company believes them to be considerably better. It is difficult, however, to make actual comparisons because of difference in the form and composition of wage schedules. The wage schedule submitted to the Price Spreads Commission by W. C. Macdonald Incorporated[15] was examined and appeared not to be greatly different from the Imperial schedule. But the difference in form really makes such a comparison of little value. On observation, the matter of general working conditions in the Montreal plant of the Imperial Tobacco Company, appear decidedly better than average. In addition, there are services—medical care, lunch-room facilities, etc., which appear to be well above the average. Also there is the practice of granting to employees retiring allowance—a practice purely voluntary and continuing at the pleasure of the Imperial Tobacco Company.[16] When all these factors are assessed, they must mean a substantial addition to the annual income of the workers. Thus it appears that the worker's total return in the Montreal plant of the Imperial Tobacco Company is above the market. But because such a condition does exist the Imperial Tobacco Company may be getting a better quality employee and the Company's labour costs may be reduced accordingly. It is probably unnecessary to make the point that wages and labour costs are two distinct things and that the employer's immediate interest is in the latter.

The point of the immediate problem can be raised by asking the question, what would happen to wages and working conditions in the plants of the Imperial Tobacco Company, consequent upon a drastic reduction in the income of the Imperial Tobacco Company. It seems that some margin above the market does exist and that this margin could, under drastic circumstances, be squeezed out. But even so, there are certain general factors which must be kept in mind.

In the first place, it must be remembered that there is a rough market rate for labour in any area—say in this immediate case, the Montreal district. Employers who do not approximate this going rate will find that their labour force is continually turning over and that they are getting the least employable members of the group. If the Imperial Tobacco Company should find it necessary to reduce wages, and alter working conditions, it could not go greatly beyond what is the general level in the district for the type of labour employed. In the short-run, it might seem able to reduce its rates but the ultimate difficulty of getting suitable people, and the lower efficiency of the workers would mean that over a period of time the Company would not be able to go much below the market rate. It could reduce wages to some extent but its labour cost would probably rise and the Company—as pointed out above—is interested in labour cost.

In an isolated or one-industry community, the going wage rate may be largely determined by one large employer; the employees bargaining power is low because there are no alternative employments. This condition often explains why wages are so low in a small or isolated one-industry community. But this condition is not true of a metropolitan area

[15] *Exhibit No. 165.*
[16] Imperial Tobacco Company Folder No. 6.

such as Montreal where one can speak in terms of a market rate of wages for different classes of labour. The idea that there is a general market or equilibrium rate of wage for labour is sometimes difficult for the non-economist to grasp but it is an important point. Wages are not made solely by the action of the employer or solely by the action of the employee but are the result of the actions of both sides. In addition, the short-run and long-run considerations may be quite different. Therefore, while the Imperial Tobacco Company could possibly infringe upon the income of its workers, there is a definite limit to which this could be carried.

But within these limits, which cannot be quantitatively stated here, there could be in the short-run some reduction in the labourers' return if the Imperial Company now pays more than the market rate for what it gets. If, however, it does not pay the going rate there could be little gained here. It must be kept in mind that the Imperial Tobacco Company is an important unit but it does not set or control the rate of wages in the Montreal area; it can pay more but it may have difficulty if it pays less than the going rate.

There is little evidence to show the attitude of labour in Canada towards resale price maintenance in general or in particular cases. In the United States, the American Federation of Labor was opposed to the Capper-Kelly bill which gives some indication of the general attitude there. On the other hand, particular groups of labour may gain from a practice which may be opposed in general by labour. Consequently, the general attitude shows nothing about any particular industry or division of an industry although it does establish a general presumption.

The effect of resale price maintenance upon tobacco growers is a diffused one because the growers are considerably removed from the retail tobacco business, and there is little observable relationship between retail prices of tobacco products and the prices of raw leaf. The material presented to the Price Spreads Commission gives ample evidence of this. In the tobacco industry there are many individual farmers—but few compared with wheat growing—a non-homogeneous product, no organized exchange, and most important, only a few buyers of tobacco. And to a great extent even these large buyers follow generally the policy of the Imperial Tobacco Company or its buying agents. Under these conditions, the purchasing of tobacco is more allied with monopoly than with competition. On the other hand, the sellers of raw tobacco in the past have been numerous, poorly organized and relying upon individual efforts. Under these conditions, it is the conclusion of economic theory that such monopolistic buyers can push down the price to the sellers over a considerable zone. This is the conclusion arrived at in the economic analysis of the report of the Price Spreads Commission and it appears to be a sound one. This conclusion is wholly an economic one and does not make any immediate ethical judgment although ultimately it does bear on public policy.

However, in the last three or four years, the Ontario tobacco growers have organized into associations and groups and the present system of marketing the Ontario crop of flue-cured tobacco and burley tobacco may add to the growers' capacity to resist the buyers' pressure. The flue-cured system is typical and may be discussed. The Ontario Flue-Cured Tobacco Marketing Association has two classes of members—producers and buyers. The directors of the Association are chosen from the two groups and, subject to the Association's by-laws, have the power to set leaf selling prices, set conditions, and control acreage. The matter of acreage control is most important and is vital to the continuance of this system. The fact that both groups meet as groups in a common directorate makes it difficult for the buyers to exert as much pressure as they did under the old system. Thus it may be a matter of doubt whether the buyers now have quite the same economic power that they had earlier.

Thus to the extent that these associations permit the growers to act as a body in negotiating prices and terms with the buyers the earlier conclusions have to be modified. That is, it is possible that the position of the growers through combination may now be such that they can resist extreme price pressure from the buyers and can hold up the price of raw tobacco even when opposed by monopolistic buyers. But in any case, the price arrived at under these conditions of two large monopoly groups facing each other is a different price from that which would be set in a competitive market but the weight of evidence would indicate that the greater power is on the side of the buyer and, therefore, on balance, the price would probaly be lower than a price set by competition on both sides. But it is probably higher than where the growers are not organized. However, all this is related to the quantity sold and under existing conditions a higher domestic price may be obtained but with

only the appropriate quantity being sold; and this appropriate quantity may not be the entire crop. The balance then has to be sold abroad for what it will bring. But the total return to the growers may be greater or less than obtained by selling the whole crop on the same prices basis—technically at an equilibrium price. If, however, the entire crop can be marketed in Canada and at the higher prices the gain is to the growing industry.

Again the vital question is: will the absence of price maintenance mean a reduction in the manufacturer's selling price and income, and can anything be passed on to the growers. As pointed out above, if the manufacturer's prices remain the same, irrespective of conditions in the distributing trade, then there is no occasion for any pressure being exerted on grower's prices and no further analysis is necessary here. But if it is assumed that the manufacturer's prices and income are affected by changes in the distributing trade, what then will be the effects on the grower's prices. The answer in large part depends on the point: are the buyers now paying only that price which will produce an adequate long-run supply.

Just what price should be paid for leaf tobacco in order to maintain an adequate long-run supply cannot be judged here. Various endeavours to compute growers' costs, valuable as they may be, are of little help in this respect because one item, the cost of land, which is usually included in such computations, is itself a function of the prices of leaf tobacco. In general, the price of agricultural land depends, in the long-run, on its revenue-producing capacities which in turn depend largely on the prices received for the products of the land. Time may be needed to adjust land prices to agricultural product prices but the relationship exists and, from the long-run viewpoint, is the significant point in this connection.

As has been pointed out, tobacco lands have increased greatly in price in the last fifteen or twenty years; at the same time, these lands have little in the way of alternate uses so that tobacco is under any relevant conditions the best crop. Inasmuch as labour and capital can expect no greater return in tobacco farming, allowing for risk, than in any other occupation, it follows that their returns will be the same as the returns of labour and capital generally in the community. Therefore, any unusual return to the industry owing to the level of leaf tobacco prices must go into increased land prices. In many forms of agriculture, because the land owner and farmer is the one and same person, the gain in one capacity is as good as the gain in the other. But, as was shown earlier, tobacco farming is to a great extent tenant farming and therefore different; the tenants will, over a period of time, get the usual returns and fluctuations in returns will tend to be taken by the land owner. Consequently, it may be possible in the long-run to push tobacco prices down to the point where labour and capital gets its going return but where land income is low and therefore land prices are very low; but as stated before, there is no immediate way of determining this point.

If the tobacco manufacturer or buyers already have the price of raw tobacco at its lowest long-run level—that price which will just bring out the desired quantity—then nothing else which may occur can make the price of this raw product go lower and maintain the long-run supply. If, concurrent to the system of resale price maintenance, the tobacco manufacturers pay a minimum for the raw material then there is no reason to assume that the elimination of the price maintenance system would make any difference. So long as the income of the tobacco manufacturers is unaffected there is no reason why they should even endeavour to get lower leaf prices; they are already doing the best they can. Indeed, as stated before, as long as the profits or income of the tobacco manufacturers are the same under price competition as under price maintenance, there is no reason to assume that price maintenance will increase the price paid to the tobacco growers. Indeed, it may be suggested that, because the volume of tobacco products sold at retail is somewhat less under price maintenance, the volume of raw materials bought will be less, and the prices paid, lower than they would otherwise be. Thus price maintenance may be no help to the grower and may be a disadvantage to the extent that the practice affects the volume of tobacco products sold.

If, however, the manufacturers are now paying the growers more than is necessary to bring forth the necessary long-run supply of raw tobacco, then there is a margin which could be cut into by the buyers. It is not clear that there is in fact such a margin but assuming that there is, then the less organized conditions which existed among the growers prior to 1934 would make it easier for the manufacturers to reduce the price of leaf tobacco. With the existing organizations of growers and the present system of marketing, it would be more difficult to push prices down, even if the margin exists. Possibly it could be done but it would meet organized resistance and an amount of publicity which might not be worth the cost. Indeed, if the growers could grow powerful enough they might not only resist the manufacturers' efforts to reduce prices but might make them share their gains. However, this is, for the time, remote.

The foregoing analysis has endeavoured to clarify the economic effects of a system of resale price maintenance upon the tobacco manufacturer and the groups immediately associated—labour and the growers. The conclusions may be summarized. If the manufacturers can maintain their own selling prices, without price maintenance, there is no economic gain and possibly some loss to the manufacturer from resale price maintenance. If the manufacturers can not maintain their own selling prices without price maintenance—which is to be doubted—there would possibly be an unpleasant period of transition while the industry was being stabilized. Ultimately, they would probably be in a stronger economic position. If the manufacturers' selling prices are not affected by the absence of price maintenance, then no effects on labour or the growers can be attributed to this condition. If manufacturers' selling prices are affected by the absence of price maintenance, the results respecting these groups are not so clear but the probability is that even if there is an adverse quantitative effect upon these two groups, it would be small rather than large and probably much less than the industry appears to think.

## CHAPTER VI

## THE RETAILER AND RESALE PRICE MAINTENANCE

In general, Canadian retail dealers in tobacco products appear to approve of the existing resale price maintenance system; their position seems to be based upon the conclusion that it eliminates price competition and that it leaves their profit margins on tobacco products intact. While this may be a sufficient conclusion for the trade, there are, however, economic effects beyond these.

As every discussion of resale price maintenance brings in the matter of dealers' margins, the significance of the point generally must be discussed and the retail dealer may be used as an example. Fundamentally, the retailer is not — or should not be — interested in his nominal margin of profit generally, or on any one commodity. His main interest is in the net returns from his business. The gross returns from his business are a function of the mark-up or rate of gross profit and his volume of business or gross turn-over. If his margin is high and his turn-over is low, his profits may be unsatisfactory; if his margin is low and his turn-over is high, his profits may be quite satisfactory. This, of course, is elementary but it seems to be overlooked by the majority of people when they are discussing the problem of price maintenance. It is exceedingly doubtful if there is any more validity in comparing mark-up margins than in comparing real estate tax rates in different communities; in the second case, the effective burden of taxation depends on the level of assessment as well as the nominal tax rate applied to it. In the first case, to repeat, the effective income depends upon the volume of business as well as the margins on this volume.

As stated, the ultimate interest of the retailer should be in the net income from his business. The following analysis will be in terms of the effects of resale price maintenance upon the number of retailers, upon the retailer's gross income and costs, and thus his net income. This will be followed by some general considerations.

In the first place, as stated above, the gross income of the retailer is a function of a volume of business and the per unit margin of profit or mark-up. The latter may be settled arbitrarily, or by collective action, but the former cannot be. As reasoned throughout here, price maintenance must mean some reduction in the total number of units sold by the trade because of the higher prices, but the immediate effects of this depend particularly on the elasticity of demand for the relevant products.

Inasmuch as at relevant prices the demand for tobacco products *in toto* is inelastic, it may be presumed that, while the number of units sold is less through price maintenance, the amount of dollar sales is greater. Price maintenance may thus in the short-run, increase the volume of dollar sales and thus the profitability of retailing tobacco, because a lesser volume of unit sales with a larger mark-up gives a larger gross income; the actual amount of increase depends on the relative size of the two factors in the change and there is no quantitative data on this point. It is assumed that the relative positions of different tobacco products remain unchanged.

If, for any reason the retail business appears attractive, or in the short-run appears more profitable, newcomers in numbers will be drawn to the business; and it is generally agreed that retailing is one of the easiest businesses to enter. The manufacturers' and jobbers' interest in having outlets tends to make it difficult for them to discourage such expansion; in fact their interest probably causes them to encourage new outlets.

If the immediate effect of a system of price maintenance is to increase the number of retailers, then the additional gains must be divided among so many dealers that the individual unit may be worse off than before; and then the retailers complain that they cannot make a living and need larger margins. If the margins were increased, the trade would go through the same cycle and end up at the same place. Unless entry is restricted or controlled, the economic gains to a trade from monopolistic practices or certain price policies may be quite illusory; but the losses to the community may be quite real.

It may be reiterated that whenever any line of business or trade obtains a profitable or attractive position, such gains can be held for the established concerns only if, for some reason or other, access or entry to the business is difficult or impossible. If access or entry to the business is easy, newcomers will enter the trade until it comes to the point of being "overcrowded". Thus the immediate and short-run effects of introducing a scheme of price

maintenance will tend to encourage entry to the retailing business with consequent lower returns per outlet. It cannot be stated too strongly that economic adjustments are a function of prices and numbers of producers or dealers; prices may be controlled but numbers are not so easily handled.

To the extent that the sale of tobacco products is not controlled by exclusive dealers in tobacco but is carried on by grocery stores, drug stores and all sorts of retailers, the foregoing analysis may appear in need of modification. But the tendency or trend is the same for both cases because where tobacco products are sold by general merchandisers the same effects will tend to appear. The extent of the effects, however, may depend somewhat upon the quantitative significance of tobacco sales to the particular dealer. It is impossible to give detailed data as to the contributions made to retailers' incomes or profits by tobacco sales but Table IX, p. 68, gives an approximation; the product is one of the fastest movers in the whole retail field and thus is likely to be a significant item for many dealers.

It is, of course, quite possible that where a retailer handles a number of lines including tobacco, the high returns which he obtains on tobacco are really used to subsidize other products. In other words, tobacco profits make a more than proportionate contribution to overhead cost, and other products through low prices, may make a less than proportionate contribution. If this occurs, the total profits in retailing may not be out of the ordinary and may, therefore, provide no particular incentive to enter the business. If this is true, tobacco users are subsidizing many other products.

There is, however, the factor that retailing itself is an occupation apparently attractive to many of the population and consequently it is a business upon which newcomers embark with the slightest or no encouragement.[1] It may be doubted if, on balance, the fact that tobacco is sold jointly with other products alters substantially the analysis set out above. Certainly, even if the quantitative effects are less, the tendency is in the same direction.

The considerations which may affect costs rather than income may now be analysed. The existence of price maintenance in retailing, means that competition is driven into other channels. Price maintenance cannot eliminate rivalry from the trade—it simply canalizes the rivalry into certain non-price channels. Those non-price channels of rivalry may be advertising, added service to the consumer, or similar things. Whatever may be the particular form non-price competition takes, it costs something and must be considered in analysing the effects of the different forms of non-price competition.[2]

It is unnecessary to give in detail the various forms of advertising which retailers may use in order to attract customers; these forms of advertising are familiar to those engaged in the tobacco industry. Possibly direct advertising of tobacco products by retailers is not as great as for many other products because of the amount of national advertising carried on by tobacco manufacturers. But to the extent that the retailer does advertise it is an addition to his cost.

Service—a very general term—is another cost which may be more important to the retailer than advertising. With all retailers selling at the one price, the individual retailer must endeavour to give service in order to attract or to hold customers. The form of the service will be decided by the individual retailer's judgment but it may mean various things—delivery, more frequent delivery, account privileges, elaborate store and fittings, etc. All of these things are costly and thus they increase the dealers' expenses.

It is, of course, true that these forms of competition occur and are used even when price competition exists. But under such conditions price may compete with price or with price plus service; the choice of form to be offered is the retailers, and the choice of selection is the consumers. Because price competition is in existence, the range of combination of forms of competition is greater than when it is absent. When price competition is absent, all rivalry must be in the form of advertising, service, etc., which is thus accentuated and which adds to the cost.

It seems apparent that under a price maintenance scheme the costs of the retailer will be higher than under price competition. It is impossible to state the extent to which costs will be higher for this depends upon the facts in any given case, and for tobacco products the point is probably of much less quantitative significance than in many other fields. But to whatever extent it does exist the results must be as indicated. Therefore, it is reasonable to conclude that resale price maintenance canalizes competition into lines which tend to increase costs rather than to reduce prices.

[1] E. D. McGarry, *Mortality in Retail Trade* (Buffalo: University of Buffalo, 1930), Chap. VII.

[2] Burns, *op. cit.*, Chap. VIII.

The importance of this point is shown by the size of distribution costs relative to costs of production. Marketing costs, of course, include all sorts of things besides advertising, service, etc., but these all contribute their mite. And everything which adds to dealer costs adds to the general cost of distribution. That these costs are already high is indicated by the following excerpt from a standard text on marketing:—

> "The total cost of marketing goods in the United States in 1929 may be estimated on the basis of the census data as $39,423,000,000 and the total cost of production as $36,169,000,000. These figures include values created by manufacturing, retailing, farming, wholesaling, construction, railroads, lumbering, mining and fishing. They are not complete, since public utilities and most types of personal service are excluded. Nevertheless, the figures are large, accounting for a total value of $75,592,000,000. Marketing accounted for 52·2 per cent of this total and production for 47·8 per cent: thus marketing is more expensive than production. Of the money spent for goods by the household consumer, slightly more than one-half went to pay the costs of marketing, and slightly less than one-half to pay the costs of producing goods."[3]

Thus the longer run effects of a system of price maintenance are to reduce the volume of sales of the individual retailer and to increase his costs of doing business. The combination of these effects will mean a smaller net income for each outlet.

The above reasoning is, of course, based on the assumption that the effects of price maintenance are spread or shared equally among the trade. In fact, this may be modified because certain retailers may be more adept at one form of competition than at another, and because certain retailers may have a superior location, etc., which cannot under price maintenance be offset by price reductions of those dealers less favourably situated. It would seem that resale price maintenance appears to differentiate in favour of the better placed retailers.

This raises the point that there may for sound economic reasons be diversity of opinion and action within the trade itself. By and large the interests of the large concern may be in price competition; the interests of the small dealer and well located dealers may appear to be in price maintenance. All agree to support price maintenance but there may arise short-run considerations which will cause a conflict between action and opinion.[4] In some lines the result has been to break down the system; in the Canadian tobacco retailing trade constant vigilance appears to keep actions in line with opinion.

Thus so far the long-run effects of price maintenance on the retailing trade will probably be: (*a*) higher unit prices; (*b*) smaller volume of unit sales but more important here a larger aggregate volume of dollar sales; (*c*) more outlets and probably a smaller turn-over per outlet; (*d*) higher costs per individual dealer and (*e*) a consequently smaller income per dealer.

It may appear odd that the trade should be in favour of a price system which in the long-run tends to reduce the income and to increase the costs of the individual business, and the number of concerns in the business. The explanation of this attitude is in part that they have not analysed the situation fully enough to judge the real effects of the policy.[5] Certainly, the general attitude of the trade indicates that there are few doubts as to the desirability of price maintenance. It is probably also true that more and more, the business world dislikes price competition; such competition appears to bring out the worst features of business and indeed of human nature. And if such competition can be eliminated, the trade feels that it can place its rivalry on a higher, and possibly in the short-run a more profitable, plane. However, it is at this point that the community's interest and the trade's interest may part company.

There are, of course, besides these economic effects discussed above, other more general effects which have been mentioned as affecting the retailer. Under price maintenance schemes, it is argued, the retailer becomes little more than the representative of the manufacturer putting the manufacturer's products on the counter along side of the manufacturer's national advertising, and offering the products for sale at a fixed price and taking in the customer's money when the sale is consummated. The retailer offers the commodity at a fixed price and relies upon his location, personal connection, or service activities, to bring in the volume of business. It may well be that retailing is coming more and more to have

[3] P. D. Converse, *Elements of Marketing* (New York: Prentice-Hall, 1935), p. 10.

[4] Grether, "Distributive Trades and Control of Price Competition" *loc. cit.*, p. 376.

[5] "The economic self-interest of dealers is encased not only in layers of ignorance and prejudice but time and again, gives ground to the innumerable influences of an emotional, sentimental and institutional quality." Grether, *loc. cit.*, p. 376.

such a position in the economic system. But it should be recognized that such a position in the system means that the functions of the retailer are being definitely limited (to some extent absorbed by the manufacturer) and that the retailer is being given little discretion in charging more or less for a product, or in the methods of carrying on his own business. He becomes less the buying agent of the community and more the selling agent of the manufacturer.

One of the reasons frequently advanced for the necessity of resale price maintenance is the necessity of eliminating certain forms of unfair competition such as the sale of products at a loss, or the use of a product as a "loss leader." The practice of using loss leaders as bait for customers is well known and needs little elaboration here. In brief, it means that some product—frequently a branded article—is selected and is sold at a very low price which is advertised widely. The purpose of this practice is two-fold; firstly, to attract customers to the store on the assumption that once in the store they will purchase things other than the one advertised and secondly, to create the impression that, because of the low price on one article, the store is a low-priced one. However, the growing willingness of the public to buy only the low-priced product tends to defeat the very purpose of the method and will probably be the ultimate answer to the problem.[6] Whether or not the practice of loss leaders is legitimate, is bitterly debated by the trade but it is doubtful if the significance of the practice is at all proportionate to the publicity given it.

It is very difficult to ascertain what is meant by a loss leader. The Federal Trade Commission in its Chain Store investigation stated that:—

> "A loss leader apparently is variously considered as an article sold below net invoice cost, net purchasing cost, or net manufacturing cost as the case may be, or it may be applied to goods sold below the net purchase cost of the goods plus operating costs, or simply to goods sold below the usual mark-up."[7]

This investigation gives little data on true loss leaders and it is probably difficult to find any extensive use of real loss leaders which would conform to either the first or second definition given above. The common case of loss leader was simply one in which the dealer sold at less than the customary price but at a price higher than the dealers' invoice price; in other words, the dealer reduced his margin and sold at a lower price to the public. To the trade, this is a loss leader.

If a dealer wishes to reduce his margin and sell at a lower price to the public, it would ordinarily be regarded as a matter for each dealer to settle himself. It should be realized that, in every line of business, the costs of doing business are not the same for every concern. For many reasons, one concern will have a low cost, another high costs, and another still higher costs. When one thinks of these costs in terms of their respective magnitudes or sizes, the individual costs may be placed in an array—that is they can be arranged in order of size from the lowest to the highest. The higher costs concerns will be the marginal firms. There are, of course, many reasons why costs will vary but probably the only permanent explanation is the varying efficiencies of managements. Because nearly every other cause of cost differentials can be capitalized, it is a general conclusion that, in the long-run, the different individual costs reflect the efficiency of management of the individual business.

To say that a trade is profitable or not, does not mean very much, for some concerns will always make profits—no matter how unfavourable general trade conditions are. Other concerns will always drag along no matter how favourable the general circumstances are. This, of course, follows from the above analysis and depends upon the individual's position with respect to costs. But the point is that no matter how good general conditions are, somebody in the industry can always explain that the trade is not prosperous. Therefore, the reaction of the trade itself to its profitability or its income must be discounted to some extent. The presence of joint costs and the ever present problem of overhead cost make the matter more complex. But as the discussion here is mainly in terms of total costs of carrying on the retail unit, these points are not immediately relevant.

The same point may be viewed more particularly from the viewpoint of the individual trade; the most common basis of analysing costs in the distributing trades is the ratio of

---

[6] Federal Trade Commission, *Resale Price Maintenance*, p. 21, Part I. Out of approximately 2,000 answers from consumers, 43 per cent indicated that they bought other than cut-price goods; 39·8 per cent indicated that they bought only price-cut goods in the price cutting store. The remainder were indefinite.

[7] Federal Trade Commission, *Chain Store Leaders and Loss Leaders* (Washington: Government Printing Office, 1933), Senate Document 51, 72nd Congress, 1st Session, p. IX.

expenses to gross sales. One tobacco dealer may have a ratio of expenses to sales of twenty per cent while across the corner, the competitor has a ratio of thirty per cent. Because of this condition, it is impossible to say that the trade "needs" a given mark-up. As pointed out before, the mark-up is only one factor in the situation. If the margin or mark-up is set at twenty per cent, it will be argued, especially by the trade that there is great harm done to the dealer with the higher cost of doing business. If the margin is fixed at thirty per cent, the dealer with the low costs, so it is argued, is denied the right to promote his business on the basis of his low costs and his efficiency in management. Further, the consumer is denied the lower prices which the low cost dealers can give.

There has been so much statistical work done by the Harvard Bureau of Business Research, the Federal Trade Commission, etc., on the subject of variation in retailers' expenses that it is unnecessary to labour the point here. The following table, Table X, is given as an example but it is only one of the many tables compiled by different bodies all of which show somewhat similar results.

TABLE X.—EXPENSE DIFFERENTIALS—FEDERAL TRADE COMMISSION*

| Number of stores, 1927 | Per cent of net sales | | |
|---|---|---|---|
| | Low | High | Average |
| | % | % | % |
| 319 drug stores | 6·9 | 56·4 | 27·3 |
| 80 grocery stores | 2·9 | 25·9 | 17·6 |
| 32 stationery stores | 20·1 | 53·7 | 32·3 |
| 38 jewelry stores | 6·5 | 56·3 | 36·5 |
| 40 dry goods stores | 5·5 | 47·1 | 29·7 |
| 50 department stores | 17·6 | 35·2 | 27·6 |

* *Hearing on H. R. 1611*, Serial 1, January 29, 1937, p. 146.

A system of resale price maintenance tends to turn the retailer into an agent who receives a fee of so much per unit of turnover. Accordingly, the retailer with the high turnover is paid more per unit of work done than the dealer with the slow turnover. As pointed out above, if retailers with a slow turnover are given a margin satisfactory to them, those with a quick turnover are given the opportunity for abnormally large profits in the short-run.

Whether or not price maintenance tends to make dealers' margins relatively high, or higher than those which exist in the absence of the practice, is a point which has been much discussed by those interested in the problem.[8] There is, of course, for manufacturers in general the problem of getting and maintaining dealers' good-will; and one of the best means to this end, is by generous margins. Thus, in general, the manufacturer in a competitive position will probably tend to give wide margins.

This conclusion is sound generally but it may not be as important in the Canadian tobacco trade as in other lines. The reason for this is the strong position of the Canadian tobacco manufacturer in dealing with the trade. The manufacturer can pretty well settle the point himself and while he may lean to generosity rather than niggardliness—as far as the point can be estimated—he will not be as generous as in more competitive lines. Thus the quantitative effect of resale price maintenance on dealers' margins set by the Canadian tobacco manufacturer is not as important as it might be in general.

Although the arguments for price maintenance, and the protests against price cutting come strongly from the distributing trades, it is questionable if they have any real case in support of this position. The argument respecting the manufacturer's position has been touched upon before. It is, in brief, that the manufacturer of a branded commodity develops, by large expenditures on advertising, a good will which is dissipated by the dealer when he cuts the price. This argument, however, is one which applies primarily where there are many brands of the same or similar commodities and where there are private brands. Consequently, this contention is of little significance in the Canadian tobacco trade where private brands are negligible.

It may be that the loss leader is a serious problem although the weight of independent evidence does not support this conclusion. But even if it is accepted as a matter of importance, it is very doubtful if the answer is price maintenance. The loss leader

[8] Grether, "Resale Price Maintenance and the Consumer", *American Marketing Journal,* July, 1935, p. 146.

problem exists when one product is cut deeply and price maintenance will eliminate this practice in price-maintained lines. But price maintenance will also deny the efficient dealer the right to reduce the prices on all lines—a very different matter from loss leader or bait. Thus, even if there is an abuse it is questionable if price maintenance is the proper solution.

Indeed, it is very important that the economic issues should be clearly understood and that the business world—and legislators too—should understand the fundamental differences between the elimination and control of unfair trade practices and general systems of price control. As suggested, unfair practices such as loss leaders—if it is one—should be specifically met, but not by general price-fixing schemes.[9]

It may be concluded that there are no long-run economic benefits accruing to the retail trade generally from a system of resale price maintenance in the tobacco industry. A few retailers may gain because they are better located for, and more adapted to the type of trade carried on under price maintenance. But in general, gains to the retail trade disappear because there is no control over the numbers in the business. It may be further concluded that unfair trade practices call for their own specific remedies and not for a general scheme of price fixing.

9 "The whole issue [resale price maintenance] is confused by the absence of a clear distinction between sound price reductions that are the essence of the play of supply and demand forces, and price practices in unfair competition." Grether, *loc. cit.*, p. 390.

## Chapter VII

## THE WHOLESALER AND RESALE PRICE MAINTENANCE

In general, the jobbing or wholesale trade in tobacco products appears strongly to favour resale price maintenance. As in the case of retailers, this practice is supported on the grounds that it stabilizes the trade, eliminates chisellers, and puts competition on ethical grounds. Again, this analysis is too simple to be conclusive and requires much elaboration.

The vital interest of the wholesaler is the same as that of the retailer, that is he is concerned with the net income from his business and his net income is his total income less the costs of doing business. The analysis here is similar to that for the retailing business but possibly it may be unnecessary to repeat all the reasoning. The following discussion covers the effects of price maintenance upon the numbers of wholesalers, and upon the wholesalers' gross income and costs, as well as certain other general considerations.

As pointed out before, the margin or mark-up in any business, including wholesaling, may be determined by competitive forces or may be arbitrarily set, but the volume of business done depends upon other circumstances and is not subject to such arbitrary control. The income of the business depends upon the volume of sales and the margin of profit—both are basic factors in the computation. It has been the assumption throughout that price maintenance, because of its reduction in the volume of consumption of the product must mean some reduction in the aggregate volume of unit sales by all wholesalers; that is some volume of unit turnover is lost, but not necessarily dollar volume. The reduction in unit sales may be a smaller percentage than the increase in prices, so that the net income of the dealers—the product of these two variable factors—will be larger; the precise reaction depends upon the elasticity of demand, which in general, and at existing levels of prices for tobacco products, is regarded as being inelastic; all of which supports the above conclusion.

Whether or not this larger return per business can be held intact depends mainly upon the point of whether or not newcomers can enter the business easily. If the mark-up makes the business appear attractive, or in the short-run makes it more profitable, then the interest of others may be attracted to the business. If new jobbing businesses can be started easily, the entrance of the newcomers will mean the reduction in the volume of business carried on by each wholesaler because now there are more dealers in the trade; there has been a greater increase in dealers than in the dollar volume of sales. The same chain of reasoning which applied to the retail business applies here. It seems to be the opinion of the trade itself that there are too many concerns in the business; this, of course, is the general view of the members of most businesses and professions, concerning their numbers and it must be accepted with some reservation.

It appears very doubtful, however, if there is the same easy entrance to the jobbing trade generally that there is to the retailing field.[1] The evidence from the tobacco trade itself showed that there was considerable stability for periods of time and that while businesses might merge, etc., few new ones came in. In addition to this, there is the practice of the Imperial Tobacco Company—and possibly of other companies—of exercising some control over the adding of new firms to their sales list.[2] Such a practice can be very effective in limiting entry to the business; it is, of course, particularly effective in limiting the number of non-tobacco wholesalers who may wish to add tobacco to their existing lines. Because of these difficulties in entering the wholesale trade, or extending into tobacco products, it may well be that for a considerable period, the added profits made possible by a price maintenance policy can be protected for those already in the business. If this conclusion is correct, then the jobbing trade may have a sound and rational basis for its position in the matter.

There is here the same problem as in the retail field—that of tobacco being one of a number of products handled. The analysis used there is valid here—that high profits on tobacco may be used to subsidize other products. While no competition is possible on

[1] N. H. Engle, "Economic Phases of the Wholesale Market," *American Economic Review* Vol. 23, No. 3 (June, 1933), p. 189 et seq; this gives a good discussion of the wholesaler's position in the United States and the Canadian situation must be somewhat similar.

[2] See letter of May 9, 1936, addressed by Imperial Tobacco Co. to Wholesale Customers, Imperial Tobacco Co. Folder No. 9.

tobacco prices, there is always the possibility that a bill of goods from a mixed wholesaler will include tobacco at fixed prices and other items at *low* prices; thus reducing the total of the two. There is also the possibility that tobacco makes more than its proportionate contribution to the overhead costs, and other products through low prices, make less than their proportionate share. To the extent that this occurs, tobacco users are here, as in the retail field, subsidizing the users of some other products.

The effect of a uniform margin for all dealers, as discussed for the retailing trade, applies to the wholesalers also, for their costs vary just as those of the retailers do. Thus a margin which is very profitable for one may be quite inadequate for another. It is unnecessary, however, to repeat again the arguments discussed previously.

The matter of costs may now be brought in. In the tobacco trade, the jobber is allowed a fixed mark-up on the various forms of tobacco products and is required to sell to the retailers at a set price and, in general, on standard terms and conditions. Under these conditions, competition must be directed to the advertising and service channels. Just as in the retail trade, because of the manufacturers' national advertising, it is probably true that advertising plays a lesser part than service; but the tendency will be for the amount of advertising, or advertising devices, to be greater under price maintenance than under price competition.

Service by the jobber may mean certain valuable aids to the retailer or it may mean merely a plethora of calls, salesmen, deliveries, etc.[3] In the tobacco jobbing trade, competition in service has meant more frequent calls by salesmen, more frequent deliveries, and deliveries of smaller quantities; it has also meant the introduction of the truck warehouse. All of these increase the cost of distributing without necessarily adding to the real flow of utilities to the retailer or to the community. The evidence from the trade itself indicates that competition in service is very keen and that it adds considerably to the cost of doing business.[4] But once price competition is eliminated, the whole rivalry must be concentrated in these non-price channels and more competition in service is inevitable.

Thus costs, under price maintenance, behave in the same way as for the retailer—that is they tend to increase. But the jobber having increased, and held, the larger income consequent upon higher prices, has a greater cushion to take the added costs of service. He may pay out all his added returns on service, or he may be able to save more for himself; it depends largely upon his place in the trade. But certainly, because of the difficulty of entrance, the jobbing trade appears to be in a position to gain more than the retailer from a price maintenance scheme.

[3] "The danger is that the array of merchandising services will expand unduly under this sort of competitive pressure. The best single illustration of a specific quality is the wholesale drug business in Great Britain. A margin of $12\frac{1}{2}$ per cent has been allowed to drug wholesalers in general. This margin was deemed adequate until the wholesale houses in the rivalry for business began to pyramid their services to dealers until they were making deliveries three or four times a day and calling by telephone twice a day for orders. This problem of the undue expansion of general merchandising services is to be solved only on a basis of intimate and rigid co-operation among the members of the trade." Grether, ***Resale Price Maintenance in Great Britain*** (Berkeley: University of California Press, 1935), p. 319.

[4] One jobber suggested that "service" cost him approximately $\frac{3}{4}$ to 1 per cent of his gross turnover; if correct, this is a heavy charge.

## Chapter VIII

## THE CONSUMER'S INTEREST

As many of the points touching the consumer's interests were discussed in connection with the retailer, it is unnecessary to do more than examine briefly certain points touching the consumer's relationship to price maintenance. The consumer's contact with the system is through the retail outlet. There is little evidence to show the Canadian consumer's attitude towards price maintenance either in the Canadian tobacco trade or in general. In the United States, the Federal Trade Commission's small statistical sample (1,990) of questionnaire replies from consumers showed that nearly three-quarters of the replies were not in favour of the practice.[1] It further showed that one of the main benefits claimed for the consumers was standardized prices.[2] It is clear that consumers' attitudes vary considerably depending upon occupations and interests, and clearly in many cases, the individual's reaction as a consumer is over-balanced by his business interests. But the presumption is that the practice is not approved by the majority of consumers.

Undoubtedly, resale price maintenance means from the viewpoint of the consumer, a higher price for tobacco products, possibly more retail outlets, and possibly though much less important in this field, more competition in service, and other similar forms. It is generally agreed that the consumers' main interest is in lower prices and that the majority of them—certainly the lower income group which needs help—would prefer, if given the chance, to take the alternative of lower prices. The difference in unit prices for tobacco products under two systems—resale price maintenance or price competition—cannot be great in cents and thus it may appear insignificant. But when it is translated into terms of annual expenditure, it becomes much more important and can, in the aggregate, mean substantial sums.

The added number of outlets may seem an apparent gain to the community in having more widely dispersed outlets; but these added outlets are at a definite cost to the community which may not wish to pay such costs. With respect to service, it must be realized that there are a large number of consumers who do not want service but want the bare commodity at the lowest possible price.[3] This element in the community is given no opportunity to exercise its choice when the matter is limited as it is by resale price maintenance—it must take convenience, service and similar cost items when it would prefer more commodity and less service. From the viewpoint of this group, the suggestion is that at least the choice should be left to them.

Many of the general considerations which might apply in industries with many producers, private brands, etc., do not apply in the Canadian tobacco industry. The number of producers is so small that it would be probable that, in the absence of price maintenance, all lines and brands would be treated equally and would be cut about the same, and consequently, the consumers would not develop prejudices on the cut lines. The United States experience suggests that cut-price tobacco products are not subqject to the consumer- or even dealer- ill-will which may apply on cut-price products in other trades. Tobacco is a product which is so clearly sold by brands which are known and used by the consumers that it is easily subject to price comparisons. Tobacco products are convenience goods and as suggested, there are probably fewer opportunities for the service appeal. Consequently, the price factor is important.

One of the points frequently urged for price maintenance in general is that there are other brands or goods which can be resorted to. In fact one of the real protections to the consumer from abuse of the system is the private brands. But in tobacco products in Canada there is virtually no substitute and thus this argument does not apply; the consumer uses price maintained goods or nothing.

---

[1] Federal Trade Commission, *Resale Price Maintenance,* Part I, p. 11.

[2] *Ibid.,* p. 13.

[3] Federal Trade Commission, *op. cit.,* p. 22. Out of approximately 2,000 answers, about 56 per cent of the number of consumers favoured cash and carry units, while 17 per cent preferred service stores.

By and large the present economic system relies on price and other forms of competition to settle what will be sold, and how, and by whom. At many places, this control has been modified but it is still the predominant force in the system. So long as this is true, it appears a proper conclusion from the consumer's interest, that the margin or profit, or more correctly, the income, to be obtained in retailing should be settled not by the arbitrary action of the manufacturers, but by the competition—eliminating unfair forms—among the dealers, whom, it is presumed, are familiar with their business. Thus, the play of economc forces will settle the number of dealers and the returns to the business just as in other places. Undoubtedly, the results of such a policy which is now the general one in retailing, are unpleasant to those dealers forced out. Individuals in any line of activity—professional or business—are prone to identify their own welfare with that of the community but this is a confusion of interests. The welfare of the community may call for the elimination of certain businesses—distressing as this may be to the individual concerned.

## Chapter IX

## CONCLUSION

The argument presented in the foregoing pages may be briefly summarized and the conclusions set out. From the general viewpoint of economic principles and the general philosophy of the present economic system, there is a presumption that resale price maintenance, on balance, is an anti-social practice. This is concluded because such a practice does not tend to maximize the volume of production or the national income. The importance of this conclusion will vary from one industry to another depending upon the conditions in each industry. Possibly the peculiar conditions in the Canadian tobacco industry may make the point of less quantitative importance there. This involves the further matter of judgment, that is, whether or not such a price policy, while definitely anti-social, is of sufficient quantitative importance to affect public policy to the point of requiring remedial action.

The immediate effects of this price policy on the manufacturer depends on whether or not manufacturers' selling prices can be held firm, without it. If these prices can be held firm the manufacturers may lose somewhat by resale price maintenance; even if these prices are not subject to the same control as under resale price maintenance, it would seem that in the long-run, the manufacturers may not economically gain by the policy. On the basis of the detailed analysis, it is doubtful if there is a substantial and permanent gain to labour from the policy of resale price maintenance; in all probability it would, because of other factors, be little affected by the presence or absence of the system. The growers of tobacco are considerably removed from the retailing of tobacco products and it is questionable if there is a significant gain — other than to landowners — in this field from resale price maintenance. In both these cases the quantitative significance of any gain which might exist is small.

The wholesale or jobbing trade appears to be benefited immediately by the policy, because of the difficulty of entry to this field. The extent of the gain cannot be estimated, and it exists only if it is not passed on to the users of other products. The retail trade in general apparently gets no permanent economic gains from the policy, although it appears to eliminate from the business for the time being certain disagreeable aspects. The consumer probably pays more for tobacco products, certainly in most areas, and he may be forced to take more service and more outlets.

These conclusions are stated baldly, for the qualifications and conditions have been set out in detail above. And from the detailed analysis, it will be realized that the conclusion might be altered by new conditions or by different weight on certain factors now present in the situation. But on the basis of logic and probability, the foregoing is sound.

These conclusions lead logically to the ultimate conclusion that as a price policy the practice of resale price maintenance cannot, on its economic side, be supported in the general public interest or as an answer to unfair trade practices; it may even be of doubtful value in the long-run to most divisions of the tobacco trade and industry itself.

As stated at the outset this survey is concerned only with the economic aspects of resale price maintenance. However, the business policy of any concern is not determined exclusively by economic considerations. Other factors besides the economic ones are bound to be considered in the determination of policy. The relative importance of these various considerations can only be assessed and decided by the concern itself. All that the present analysis has endeavoured to do is to make clear the economic aspects and effects which are relevant to a careful consideration of the whole problem. The absence or presence of resale price maintenance in the Canadian tobacco trade involves other considerations, which from the viewpoint of the Imperial Tobacco Company, or of the whole industry and trade, may be the deciding factors as long as the matter remains one of business policy and private concern.

# APPENDIX I

## The Law of Resale Price Maintenance in Canada

BY

J. A. CORRY, *LL.B., B.C.L.*

*Assistant Professor of Political Science*
*Queen's University*
*one-time Professor of Law*
*University of Saskatchewan Law School*

1937

## THE LAW OF RESALE PRICE MAINTENANCE IN CANADA

The law of Canada on almost any subject takes as its starting point the doctrines of the English common law. Deviation from the lines of those doctrines is generally the result either of peculiar local conditions too pronounced to be disregarded or of special statutory provision. It is therefore material to notice briefly the English law on resale price maintenance.

An agreement to maintain resale prices is always an agreement in restraint of trade—it limits the free discretion of the individual to buy and sell as he will. The earlier common law always looked with deep suspicion on agreements in restraint of trade. By the nineteenth century, it became established, however, that agreements in restraint of trade would be lawful and enforceable if the restraint was reasonable—"reasonable, that is, in reference to the interests of the parties concerned and reasonable in reference to the interests of the public."[1] The old prejudice against restraints of trade is preserved in the rule that all restraints of trade are presumed to be unreasonable and therefore unenforceable until proven to be reasonable by the party relying on their validity in the particular case. But as far as resale price maintenance agreements are concerned, this is the only shred of the legal prejudice which remains. For commercial agreements are no longer critically scanned by the courts. The judges have repeatedly said that, in such agreements, the parties are the best judges of what is reasonable between themselves.[2] This is rather too sweeping a statement because in two cases where the agreements were designed, among other things, to maintain prices, the courts held that the restraints imposed went beyond what was reasonable in the interests of the parties.[3] However, out of seven cases in which resale price maintenance was directly or indirectly involved, these are the only two where the agreements were not upheld. In each of these two cases, the agreements were not as limiting trade but eliminating it entirely in certain circumstances. It has been comparatively easy to overturn the presumption that a restraint is unreasonable in the interest of the parties.

No English case has ever decided directly and unequivocally that a resale price maintenance agreement was contrary to the interests of the public. Once shown to be reasonable between the parties, the onus of proving detriment to the public "will lie on the party alleging it" and "this onus will be no light one."[4]

While it is true that there is only one English case where the issue of reasonableness in the public interest was squarely raised and dealt with explicitely,[5] nevertheless, it is clear that, as far as the interest of the public is concerned, slight evidence if any, has been required to justify an agreement for maintenance of resale prices. In the cases the judges emphasize public advantages to be gained from resale price maintenance agreements; conservation of resources, stabilising of trade, and fair return to labour and capital. However, the validity of resale price maintenance agreements is far from being established as an absolute and universal rule in the English cases.

In most of the cases, the existence of free trade is an implicit, and sometimes an explicit, assumption.

> "Public policy does not permit of any (situation) that would really produce public mischief; such might be possibly the case if it was calculated to produce a pernicious monopoly in articles for English use—a point I desire to leave open and one which, having regard to the growth of syndicates and trusts, may some day or other become extremely important."[6]

This statement was explained by Lord Parker to contemplate

> "a state of affairs in which some trade or industry has passed or is likely to pass into the hands or under the control of a single individual or group of individuals and

[1] *Nordenfeldt* v. *Maxim Gun and Ammunition Co.,* (1894) A. C. 535 at p. 565, per Lord MacNaghten.

[2] *North West Salt Co.* v. *Electrolytic Alkali Co.,* (1914) A. C. 461 at p. 471. *Palmolive Co.* v. *Freedman,* (1928) Ch. 264 at p. 271.

[3] *Collins* v. *Locke,* (1879) 4 A. C. 674; *Evans* v *Heathcote,* (1918) 1 K. B. 408.

[4] *Attorney-General of Australia* v. *Adelaide Steamship Co.,* (1913) A. C. 781 at p. 797 approved by Lord Haldane in *North West Salt Co.* v. *Electrolytic Alkali Co.,* (1914) A. C. 461 at p. 473.

[5] *Palmolive Co.* v. *Freedman,* (1928) Ch. 264.

[6] *Nordenfeldt* v. *Maxim Gun Co.,* (1893) 1 Ch. 630 at p. 668.

> to indicate that if a restraint of trade is likely to produce that result, it may on grounds of public policy, be unenforceable, however reasonable in the interests of the parties to the contract."[7]

He went on to say that one of the evils of monopoly conditions is "the undue enhancement of the prices of goods and services,"[8] and that such an evil is much more likely to arise in a country which maintains a protective tariff than in a country which does not.[9]

In the *North West Salt Co.* v. *Electrolytic Alkali Co.*, substantially all the manufacturers of salt in north-west England had entered an agreement to regulate price and output and they were found to have established practical control of the inland salt market. The House of Lords said that this was not, of itself, unreasonable in the public interest. There might still have been effective competition from abroad.[10] Lord Haldane specifically cautioned that "if a monopoly were attempted to be set up which was calculated to enhance prices to an unreasonable extent, that would be ground for refusing to enforce it."[11] In *Palmolive Co.* v. *Freedman*, Lawrence, L. J. said he did not think it would be a ground for complaint on the part of the English public even if none of the Palmolive products were sold in England at all.

> "It is not as if the plaintiff had acquired control of the whole or a substantial part of the output of some indispensable commodity (such as coal or salt or toilet soap) and were endeavouring to force the members of the public to pay higher prices for goods they were practically compelled to puchase."[12]

Even where the assumption of free trade is not explicit, the frequent use by the judges of the argument that it will rarely be in the interests of a producer to raise prices to an unreasonable extent shows that this assumption underlies the argument.

The early attitude of the Canadian courts seems to have conformed to the result of the English cases. In *Ontario Salt Co.* v. *Merchants Salt Co.*, in 1871[13] a number of salt manufacturers had agreed to market all their product at a common price through a trustee. The court held that the agreement was not intended to create a monopoly because it did not include all the local manufacturers and, in any case, salt could be imported from abroad. Competition would effectively regulate any attempt of the trust to raise prices to an unreasonable extent.

Eighteen years later, the results of the adoption of a protectionist tariff policy persuaded the Canadian parliament that the common law did not afford sufficient protection to the public and a statute provided that certain agreements of the type used to maintain prices should be criminal offences.[14] This was a divergence from the English common law. At worst, in England, the agreement was merely unenforceable. Henceforth, in Canada, some agreements were to be criminal offences. Where the words of the statute clearly applied to an agreement there could be no appeal to the English authorities. More than that, even where it was doubtful whether the statute struck at a particular agreement, it became doubtful whether the judges would fall back upon the common law as an aid to interpretation because those rules assumed a free trade system and Canada had a protective tariff.[15] Canadian judges, in interpreting what is now s. 498 of the Criminal Code, have consistently refused to use the principles laid down in the English cases to expound or limit their interpretation.[16] The same is true of their interpretation of s. 2 of the Combines Investigation

---

[7] *Attorney-General of Australia* v. *Adelaide Steamship Co.*, (1913) A. C. 781 at p. 795.

[8] *Ibid.*, p. 799.

[9] *Attorney-General of Australia* v. *Adelaide Steamship Co.*, (1913) A. C. 781 at p. 795.

[10] *North West Salt Co.* v. *Electrolytic Alkali Co.*, (1914) A. C. 461 at p. 470.

[11] *Ibid.*, p. 471-2.

[12] *Palmolive Co.* v. *Freedman*, (1928) Ch. 264 at p. 282.

[13] (1871) 18 Grant's Chancery Reports 540. It is not without significance that as late as 1917 the Supreme Court of Canada dismissed the suggestion of an illegal conspiracy in restraint of trade by pointing out that there was no import duty on the particular commodity. *MacEwan* v. *Toronto General Trusts Corporation*, (1917) 54 S. C. R. 381. At that time, the Dominion Salt Agency controlled ninety per cent of the Canadian production. No evidence to show enhancement of price or undue limitation of facilities was, in fact, offered as the point merely arose incidentally.

[14] Several times amended and now incorporated in the Criminal Code R. S. C. 1927, Ch. 36, ss. 496-8.

[15] In *Wampole* v. *Karn*, (1906) 11 O. L. R. 619 at p. 628 the court said that the Common Law did not apply because of the statute and the statute was passed because of the introduction of a protective tariff.

[16] *Rex* v. *Elliott*, (1905) 9 O. L. R. 648. *Weidman* v. *Shragge*, (1912) 2 D.L.R. 734 at pp. 737, 745, 758. *Stearns* v. *Avery*, (1915) 33 O. L. R. 251 at p. 252. *Dominion Supply Co.* v. *Robertson*, (1917) 39 O. L. R. 495.

Act. It would be rash to assume that English authorities can be successfully used in Canada for the purpose of upholding resale price maintenance agreements. The question here is primarily one of interpreting certain broad general expressions in a statutory enactment upon which a conclusion is likely to be reached by reference to all the circumstances[17] rather than by reliance on rules devised for a radically different situation.

The relevant statutory provisions are to be found in sections 496-8 of the Criminal Code and section 2 of the Combines Investigation Act of 1923. Under the Criminal Code, agreements to limit unduly the facilities for producing, supplying, dealing in, etc., to unduly prevent or lessen the production of, to unreasonably enhance the price of or unduly prevent or lessen competition in, any article or commodity are criminal offences. Under the Combines Investigation Act, any combination resulting from an agreement or arrangement to limit facilities, to prevent or lessen production, or competition, to enchance price or to fix a common price or resale price is a criminal offence *if* the combination has operated or is likely to operate "to the detriment or against the interest of the public." In interpreting the Criminal Code sections, the courts have said that "unduly" is meant to refer to an excess from the point of view of the interests of the public.[18] It has also been held that the words "to the detriment or against the interest of the public" were intended to be inclusive of "unreasonably" in clause (*c*) and of "unduly" in clause (*d*) of s. 498.[19] It is reasonably certain, therefore, that s. 2 is co-extensive with subsections (*a*), (*c*) and (*d*) of s. 498 of the Code. But that does not advance the matter far. It is evident that the expressions, "unduly", "unreasonably", "to the detriment or against the interest of the public", are very elastic expressions even if they do mean the same thing.[20] The only way in which they could gain precision in a legal sense is by a series of judicial decisions placing specific sets of facts inside or outside these expressions. But the facts involved in "combines" cases are always complex, and the judges often do not clearly say which aspects of the fact situation are crucial and which are irrelevant. Add to this the obvious remark that the possible combinations of fact in this kind of case are almost infinite and it will be clear that the thirty odd cases in Canada, which have raised, directly or indirectly, the questions of civil enforceability or of criminal liability do not make it possible to label every variety of agreement with assurance.

Although the purpose is to find out what agreements to maintain resale prices are free from the taint of illegality, it is not sufficient to inquire merely into those cases which have dealt with "unreasonable" enhancement of price or enhancement "to the detriment of the public." An agreement for the purpose of maintaining or even of advancing resale prices may be quite unobjectionable in that it does not do so unreasonably, etc., and yet fall within some of the other clauses. For example to maintain resale prices, there must be some regulation of supply and that in itself may amount to an undue limiting of facilities for producing or dealing or to an undue preventing of competition.[21] All these arrangements between producers and distributors have, as their ultimate aim, a regulation, if not a maintenance or advancement, of prices. The subsidiary devices for reaching that end may be of minor interest to the parties to the agreement but the statutes clearly contemplate that they may be intrinsically objectionable regardless of whether price is advanced "unreason-

---

[17] See Hodgins, J. A. in *Attorney-General of Ontario* v. *Canadian Wholesale Grocers Association.*

[18] *Weidman* v. *Shragge,* pp. 758-61.

[19] *Rex* v. *Alexander,* (1932) 2 D. L. R. 109 at p. 111.

[20] The sterility of judicial attempts to explain, in a general way, what these expressions mean is well illustrated by the definition essayed by Osler, J. A. in *Rex* v. *Elliott,* (1905) in 9 O.L.R. 648 at p. 662, "Competition is not to be prevented or lessened unduly, that is to say, in an undue manner or degree, wrongly, improperly, excessively, inordinately, which it may well be in one or more senses of this word if, by the combination of a few, the right of the many is practically interfered with by restricting it to the members of the combination."

Another general discussion of the meaning of s. 498 (*d*) to be found in the cases is that given by Anglin, J. in *Weidman* v. *Shragge.* It has definite value. He decided that "unduly" means something more restrictive on the right of agreement than does "unreasonably". That is important because, if "unduly" meant "unreasonably", it could then be strongly argued that 498 (*d*) merely codified the common law test and that the English cases which allowed of such easy proof of reasonableness would be applicable to its interpretation. (See paragraph 3 of the text above.) But the Supreme Court of Canada declared that the use of "unduly" makes the Criminal Code more restrictive of combination than was the common law.

In *Stinson-Reeb Co.* v. *The King,* (1929) 3 D. L. R. 331 at p. 335, Mignault, J. said, "Injury to the public by the hindering or suppressing of free competition, notwithstanding any advantage which may accrue to the business interests of members of the combine is what brings an agreement under the ban of s. 498."

[21] See *Attorney-General of Ontario* v. *Canadian Wholesale Grocers Association,* (1923) 53 O. L. R. 627, *Rex* v. *Alexander,* (1932) 2 D. L. R. 109, *Rex* v. *Canadian Import Co.,* (1934) 61 C. C. C. 114.

ably" or "to the detriment of the public." It is necessary, therefore, to consider all the cases in which the courts have pronounced on the validity, or criminality, of such agreements.[22]

The cases differ so much in their facts that it is not possible to disentangle any typical fact-situations. Therefore, the cases cannot be grouped as illustrating rules. It seems best to consider the more important cases in roughly chronological order. When members of a retail coal dealers' association agreed not to buy coal from producers or jobbers who sold direct to retailers or dealers who refused to maintain prices as fixed by the association, the president of the association was convicted under s. 498 (*d*) of the Criminal Code.[23] The association had rules for expelling members who bought from offending producers or jobbers.

It issued "lookout" lists on which offending members were placed. This list was a warning to all producers, jobbers, and retailers not to sell to him except in ton lots at retail prices. The association turned down applications for membership on the ground that the business would not admit of further competition. The court declared that these facts showed it to be the purpose of the association to secure a monopoly and hence a conspiracy for the undue lessening of competition. Emphasis was placed on the endeavour to control the *whole* supply and so to destroy competition.

*Wampole* v. *Karn*[24] was a civil action by a manufacturer against a wholesaler on a resale price maintenance contract. The contract was prepared by the drug section of the Retail Merchants Association, approved by the Wholesale Druggists Association and pressed upon the manufacturers. The plaintiff and others agreed to use it. The design was to fix resale prices and limit trade to those who agreed to maintain them—in fact, the court said, to members of the association. There was no evidence that the association expelled or fined members who failed to abide by the contracts nor was there anything to show limits placed on access to membership. The contract with the manufacturer and his supposed power of enforcement were probably thought to provide a sufficient sanction. Without making a specific finding to that effect, the court seems to have been satisfied that practically all manufacturers of cod liver oil were exacting these agreements. Here again it was held that the object was not merely to lessen but to destroy competition. They also found an unreasonable enhancement of price.

In 1903, an association of master plumbers and an association of plumbers' supply houses agreed that, in consideration of members of the former agreeing to give a "preference" to members of the latter where prices were equal, the latter agreed to sell to independent plumbers only at a twenty per cent advance and to the public not at all. The court gave an opinion that this agreement was in violation of the Criminal Code. A later more rigid agreement between the two associations in which they agreed to deal only with one another was also held to violate subsections (*a*), (*b*), (*c*) and (*d*) of s. 498.[25] Lists of members in good standing were circulated and offending members were suspended. In an action against the two associations after their incorporation, they were found guilty on all four subsections and fined.[26] The object, said the court, was to limit the plumbing business to members of the associations. No evidence was referred to in the judgment as to whether it was easy or difficult to get into the associations which argues that it was not regarded as material.

The Alberta Retail Lumber Dealers Association, comprising ninety per cent of the trade, established a schedule of prices to which members were to adhere and notified manufacturers that, if they sold to non-members, members would not buy from them. Any retailer was to be eligible for membership but final decision on eligibility lay with the directors. The evidence showed that some applications of retailers had been refused. The president of the association was convicted under s. 498 ss. (*d*).[27] Three judges thought that the fixing of prices and the agreement to bring pressure on the manufacturer were each violations of ss. (*d*). Stuart J. was not certain that the mere attempt to compel manufacturers to sell through retailers would be criminal. But when they went further and tried to restrict sales to a class of persons of their own definition, it was clearly criminal.

---

[22] It is perhaps worth mentioning that in eleven criminal prosecutions before the courts, convictions followed in eight cases. In nine civil actions to test the enforceability of the agreements there have been eight clear findings of illegality. This is, of course, a poor way of predicting the future course of judicial decision. But it does indicate that the prevailing judicial temper has been in favour of a broad interpretation of the statutes. For the vagueness of the language would have provided loopholes had they been disposed to find them. The same impression is gained from the vigorous denunciation of combines found here and there in the cases.

[23] ***Rex*** v. ***Elliott,*** (1905) 9 O. L. R. 648.

[24] (1906) 11 O. L. R. 619.

[25] ***Rex*** v. ***McMichael,*** (1907) 18 C. C. C. 185.

[26] ***Rex*** v. ***Master Plumbers and Steamfitters Co-operative Association*** (1907) 14 O. L. R. 295.

[27] ***Rex*** v. ***Clarke,*** (1908) 14 C. C. C. 57.

Some support for this distinction is to be found in *Rex* v. *Beckett*,[28] in which charges under s. 498, ss. (*b*) (*c*) and (*d*) were laid against the Dominion Wholesale Grocers Guild. It comprised ninety-five per cent of the wholesale grocers. Its objects were to make the whole grocery trade flow through wholesale channels and to secure a fixed margin on various products. They tried to get manufacturers to fix list prices for sale to retail trade and to promise them a percentage. They pledged themselves to give a preference to manufacturers whom their association thought deserving of support. Any wholesaler could become a member and the only ground of expulsion was the conduct of a retail business. They also attempted to persuade manufacturers to refuse to deal with wholesalers who did not maintain the list price. The defendants were acquitted. The earlier cases were distinguished on two grounds: (1) There was no attempt or intention to restrict benefits to members; any bona fide wholesaler could buy at the same price as members and was free to join the association if he wished; the aim of the association was to benefit the entire wholesale trade; (2) They did not fix prices but got the manufacturer to do it. (There was no evidence that they attempted to get manufacturers to fix retail selling price and they themselves claimed they did not want to fix prices.)

This carries forward what seems to be implicit in the earlier cases. The court seems to consider that the Code strikes only at attempts to secure full fledged monopoly. You are not justified in inferring a monopolistic aim where the group does not seek to limit advantage to its members and makes no attempt to fix prices to the public. Indeed, the judge in this case thought the facts expressly negatived an intention to secure a monopoly because he found as a fact, that the members of the association did not intend to violate the law or to do malicious harm to any member of the public. (The popular concept of monopoly as a wicked monster whose *primary* object is to devour the public.) He quotes from a wide range of authority to show that a malicious intention to oppress the public is necessary in order to come within s. 498. Needless to say, this view is not supported by authority and later decisions expressly assert the contrary.[29] For example, in *Weidman* v. *Shragge*,[30] where two Winnipeg junk dealers, controlling over ninety per cent of the junk business in western Canada, agreed to fix a common buying price for junk, the Supreme Court of Canada found the agreements to be in contravention of s. 498. It was conceded that the parties had only been concerned with their own interests and that the agreement did not go beyond what was reasonably necessary from their narrow point of view. But the inevitable effect of carrying out the agreement, regardless of intention, would be the undue lessening of competition.

In this case, the earlier contention, that the Code merely made what would have been an unenforceable restraint of trade at common law a criminal offence, was laid to rest. "Unduly" was declared to have a wider meaning than "unreasonably." The common law did not invalidate, on grounds of detriment to the public, any restraint of trade which was less than a "pernicious monopoly." This case made clear that an undue limiting of competition would be an offence even though it did not make specific findings about or lay emphasis upon the proportion of the total trade which the parties to the agreements controlled or aimed to control. In some of the cases, of course, it is obvious from the facts stated that they were in control of almost all the trade. In most of them if not all, it can be inferred that the devices used could not have been effective if they had not been in that position. Nevertheless, the slackening of emphasis on monopoly appears to indicate that restrictive agreements by those merely in a dominant position may be an offence.

Before going on to the later cases, it should be noted that in 1907 the grain buyers association at Winnipeg was acquitted on a charge of undue restraint of trade.[31] The association had made a rule that the members must, in purchasing wheat from farmers, pay not more or less than one cent per bushel under the export market price. The uncontradicted evidence of members of the association that one cent was the smallest possible margin upon which they could continue to offer their services to wheat growers convinced the Court that this restraint was in the public interest. It is worth noting because it is one of the few cases where acquittals have been secured. Beyond that, it involves so many peculiar facts as not to be very helpful.

---

[28] (1910) 20 O. L. R. 401.

[29] See, for example, *Dominion Supply Co.* v. *T. L. Robertson Co.*, (1917) 39 O. L. R. 495 at p. 510. *Rex* v. *Canadian Import Co.* (1934) 61 C. C. C. 115 at p. 149-50. *Rex* v. *Alexander*, (1932) 2 D. L. R. 109 at p. 123

[30] (1912) 2 D. L. R. 734.

[31] *Rex* v. *Gage*, (1907) 13 C. C. C. 415, 428.

The T. L. Robertson Co. was a member of the Canadian Wire Products Association which consisted of fifteen Canadian producers. It is not said what proportion of the total production they represented but that seems indicated by the fact that they assigned to themselves various percentages of the Canadian business and pooled the excess sales of any unit. They fixed prices at which wholesalers were to sell to the retail trade but there is no evidence in the case to show that they fixed the retailers selling-price. A wholesaler who broke prices was refused delivery of the remainder of a supply he had contracted to purchase on the ground that he had broken the terms of the contract setting his resale price. He sued for damages for non-delivery. He failed because the contract was made in pursuit of a criminal purpose.[32] The association had violated s. 498 ss. (*b*) and (*d*). They "prevented competition in the trade of an entire product."

By 1923, the Canadian Wholesale Grocers Association had revised their previous policy. They were attempting to restrict wholesale trade to members and membership depended on (1) the consent of the executive committee member doing business in his vicinity and (2) approval of the executive committee as a whole. The association refused to deal with manufacturers who sold direct to retailers and they had agreements with various manufacturers to restrict sales to themselves and to fix prices in advance of those which had formerly prevailed. The Attorney-General of Ontario sought a declaration of illegality of these agreements and an injunction against further activities of the association.[33] All four judges held that even if there was a criminal conspiracy, the Attorney-General would not be entitled to the relief sought. Three of them refused to give an opinion on the criminality of the agreements. Hodgins, J. A. gave an opinion that the effect of s. 498, ss (*b*) was that

> "A combination does injure and restrain trade if it coerces a manufacturer by requiring him to refrain from trading with one class of dealers if he would preserve his trade with those in another and self-constituted class and if it prevents a jobber from trading in a commodity the sale of which to him is refused."[34]

This case is most unsatisfactory because it is not a binding authority for anything relevant to the present discussion. But the dictum quoted above is the sort of thing on which a judge might seize to bolster up an extension of the scope of the criminal law. The last limb of the proposition goes further than any other statement in the cases.

In *Rex* v. *Singer*,[35] the facts showed three associations, a master plumbers' association, a supply house association and the Amalgamated Builders Council, composed of the master plumbers and registered as a trade union in an attempt to secure the immunities granted to such bodies. These associations were interlocked through the appointment of a common commissioner who had very wide powers of co-ordinating their activities in the pursuit of common objects. The activities of the Windsor local of the A. B. C. were the only details related in the judgment as to the actual operations of the associations. The court accepted the evidence as showing that they proposed to establish common prices for plumbers' supplies and to restrict supply to members of the A. B. C. The actual refusal of supplies to independent plumbers showed that the supply houses had agreed, tacitly, at any rate, to restrict supply. No evidence was given as to whether membership was limited in an arbitrary way. The court found that the scheme, as a whole, infringed s. 498, ss. (*a*), (*b*) and (*d*), as well as s. 2, ss. 1 (*c*) (i) (iii) (iv) and (v) of the Combines Investigation Act. No specific statement was made by the court as to the proportion of the industry controlled by the associations but the judge did say the agreements were calculated to "create or control a monopoly of the sale" of plumbing supplies.

In *Stinson-Reeb Co.* v. *The King*,[36] a plasterers' association was comprised of six dealers in builders' supplies in Montreal and all the manufacturers whose plants were competitively within reach of the Montreal market. The two groups agreed to deal only with one another. There were independent Canadian producers but they could not compete because freight rates on small shipments were too high and cost of storage of large quantities too great. One independent dealer brought in plaster to sell at lower prices. The others forced him out of business in a price war. There could be no question that competition was completely destroyed in Montreal and the members of the association were convicted under s. 498, ss. (*a*), (*b*) and (*d*).

[32] (1917) 39 O. L. R. 495. See also ***Peloquin* v. *Latraverse*,** (1919) 33 C. C. C. 165.
[33] *Attorney-General of Ontario* v. *Canadian Wholesale Grocers Association*, (1923) 53 O. L. R. 627.
[34] ***Loc. cit.***, p. 649.
[35] (1931) O. R. 202.
[36] (1929) 3 D. L. R. 331.

Members of the Electrical Estimators Association in Toronto were indicted for offences against s. 498, ss. (*c*) and (*d*) and s. 2, ss. 1, (*c*) (iv) (v) of the Combines Investigation Act. The main purpose and activity of the association was to average tenders on large electrical contracting jobs. The association consisted of some seventeen members. While it comprised only a small portion of the total number of firms in this trade in the city of Toronto, it included the larger firms and they had little competition from the smaller firms on the larger contracts. In their own defence, they offered evidence to show that they had not enhanced prices unreasonably; that even after the average tender was accepted, the job sometimes yielded a loss or, at least, no profit. But the evidence of the Crown showed many cases which indicated that high percentages had been added to prime costs.

The defendants were convicted on all counts.[37] It made no difference to charges under s. 498, ss. (*d*), for example, that prices were not enhanced. The system adopted by the defendants was not to be judged "by its accidents but by its tendency." The tendency was to prevent or lessen competition which is a condition of all social and economic advance. Any serious limitation of competition is "undue" in the public interest. It was no answer to this to show that the motive was a tender at a fair price.

The judgment of Raney, J. in this case is the only one in the whole group of cases, except for the Supreme Court judgments in *Weidman* v. *Shragge,* which deals in an interesting way with the economic arguments. He comes very close to suggesting that open competition is always beneficial to the public, from which it might seem to follow that any combination to limit it would be contrary to the law. But none of the cases will fit that simple pattern. They all concede that some limitation is permissible before undue lessening is reached.

In *Rex* v. *Canadian Import Co.,*[38] the courts had to consider the complicated transactions of the importers of British coal. From these emerged a number of agreements the validity of which were considered. (1) The so-called basic agreements between British Coal Corporation, Canadian Import Co., and the Weaver Coal Co., to exclude Russian coal and to fix the common price at which British Coal Corporation would supply Weaver Co. and Canadian Import Co., (2) the agreements to get control of the independent Welsh and German supplies at their source, (3) the agreement to divert British coke out of the channels of competition. The trial judge held that the basic agreements fixing the common price to the Weaver and Import companies and excluding Russian coal were not, in their main clauses, contrary to law. He held that it was in the public interest to establish a steady market for British coal in Canada in order to break our dependence upon American anthracite and that could not be done unless the principal importers got together. He further found it to be in the public interest to exclude the Russian coal. However, he held that the subsidiary clauses of the basic agreement by which the Weaver and Import companies agreed to fix wholesale and retail prices were an "undue restraint of trade". Perhaps these clauses would not have been objectionable if taken alone. But when linked up with the facts that importers of European coal did not fix their price until after the American prices had been announced and that all the big importers of European coal participated in fixing the price, they are shown to be "a step along the road in a conspiracy." "Even if the monopoly did not exist on all kinds of coal it applied to such a large percentage that the law provides a remedy."[39] The structure of prices created by these subsidiary agreements served to keep other importers in line and thereby create a virtual monopoly. So the agreements of 1930 and 1932 imposing sanctions on retailers were also contrary to law. The judge declared that the retailer must be kept free in a country where competition is regarded as a public safeguard.

He also held the agreements on German and Welsh independent coal were infringements as they unduly restrained trade and also lessened competition to the detriment of the public. The agreement on British coke was also a violation of law for the same reasons. He said he was unable to say whether there had been an unreasonable enhancement of price and was perplexed to know how a court would determine such a question. But it was not necessary to make any such determination. It was enough to look at the nature of th agreements and see what they were designed to accomplish.

On appeal, the conviction under s. 498, ss. (*a*) and (*d*) of the Criminal Code and s. 2, ss. 1 (*c*) (v) of the Combines Investigation Act was upheld.[40] The court was unable to follow the reasoning of the trial judge on the legality of the main clauses of the basic agreements. They could not see why it could be at once necessary to the establish-

---

[37] *Rex.* v. *Alexander,* (1932) 2 D. L. R. 109.
[38] (1934) 61 C. C. C. 114.
[39] *Loc. cit.,* p. 162.
[40] (1934) 62 C. C. C. 342.

ment of effective competition with American coal that Welsh should be introduced and Russian excluded. They said further that the basic agreements were clearly aimed at an undue lessening of competition because they eliminated competition between the two largest importers.[41]

It is from the decisions summarized above that one must try to extract forecasts as to how judicial interpretation of the Code and the Combines Investigation Act will go in the future. The remaining cases either do not set forth the facts or are decided upon some legal principle extraneous to the subject under discussion. Nor are the cases discussed particularly helpful. In all those where convictions resulted, the agreements tended to a substantial destruction of competition and not merely to its lessening. Two cases of acquittal are peculiar. *Rex* v. *Gage*, turns on the unique character of the grain trade and the mass of evidence to show that one cent per bushel was the minimum on which a public service could be rendered. *Rex* v. *Beckett* seems to turn on the fact that the Wholesale Grocers Association was not attempting to monopolize the trade for its members alone. No later case has discussed this proposition and it is very doubtful if it can be upheld since *Weidman* v. *Shragge* settled the scope of the word "unduly". There are no cases to mark a fixed point where a mere limiting of competition becomes undue.

Beyond the fairly obvious proposition that agreements aimed at or tending to the destruction of competition are infringements of the Criminal Code and of the Combines Investigation Act, it is impossible to speak with assurance. It seems probable, but no more than probable, that an agreement to limit supply and regulate price, made between two or more persons who dominate the trade in a particular product through their control of the greater portion of the available supply, will be held to be an offence. The decision in *Rex* v. *Canadian Import Co.*, can be read as so deciding. But it is important to remember that it takes a course of decision rather than a single decision to settle the law. And furthermore, the judges in this case were not prepared to rely entirely on the agreement between British Coal Corporation, Canadian Import Co. and the Weaver Co. They linked it with the fact that substantially all the importers of European coal collaborated in fixing prices and with the peculiar circumstance that their prices were not fixed until after the prices of American anthracite for the coming year had been announced. So the case does no more than make the proposition stated above barely probable.

There is no Canadian decision on the position of a single person or corporation which has a dominant position in a trade because of the share of the available supply which it controls. The only judicial observations which bear upon it at all are to be found in *Rex* v. *Canadian Import Co.* In that case, the trial judge recognized that the power to establish a structure of prices which keeps others in line is a power to create a virtual monopoly.[42] On appeal, counsel argued that the basic agreement between British Coal Corporation, Canadian Import Co. and the Weaver Coal Co. was nothing more than the record of a determination by the British Coal Corporation which controlled fifty per cent of the British supply, that its goods should be handled only by the Import Co. and the Weaver Co. on terms fixed solely by itself. The comment of St. Germain, J., acquiesced in by the other judges, was as follows: "I do not believe that the lessening if not the elimination, of competition can be justified on the ground that this was effected by reason of the possession of superior strength."[43] It is impossible to say whether this statement will be developed into another qualification of the broad doctrine, so firmly rooted in the common law, that a person—or corporation—is entitled to dispose of his own property on such terms as he sees fit. Thus far it has not but there is nothing in the language of the Criminal Code or the Combines Investigation Act to prevent it.

---

[41] The language of St. Germain, J. who gave the principal judgment is somewhat perplexing. At pp. 365, 370 he distinctly says that he goes further than the trial judge and finds the main clauses of these basic agreements contrary to the public interest. But at pp. 363, 365 he qualifies by saying that the main clauses, read in relation to what the trial judge called the subsidiary clauses, show combination and conspiracy. But if that is all he means, he hasn't really said any more than the trial judge.

[42] (1934) 61 C. C. C. at p. 162.

[43] (1934) 62 C. C. C. at p. 381.

# APPENDIX II

## Statistics of Tobacco Production in Canada

### TABLE XI.—TOBACCO PRODUCTION IN CANADA, 1925–1937 *

| Year | Flue-Cured | | Burley | | Dark Air and Fire-Cured | |
|---|---|---|---|---|---|---|
| | Area in Acres | Production in thousands of pounds | Area in Acres | Production in thousands of pounds | Area in Acres | Production in thousands of pounds |
| 1925 | 7,331 | 6,268 | 7,340 | 9,432 | 3,458 | 4,798 |
| 1926 | 6,429 | 5,413 | 12,217 | 11,077 | 4,847 | 4,656 |
| 1927 | 7,570 | 6,248 | 20,710 | 22,581 | 5,750 | 7,008 |
| 1928 | 10,905 | 8,726 | 15,981 | 17,787 | 5,641 | 6,642 |
| 1929 | 15,085 | 9,054 | 8,845 | 7,958 | 4,120 | 4,194 |
| 1930 | 17,379 | 12,451 | 12,665 | 13,300 | 2,700 | 2,768 |
| 1931 | 27,595 | 24,600 | 18,800 | 19,000 | 950 | 960 |
| 1932 | 28,219 | 27,941 | 15,899 | 16,701 | 1,500 | 1,500 |
| 1933 | 30,548 | 27,215 | 8,758 | 9,651 | 1,502 | 1,944 |
| 1934 | 24,731 | 22,103 | 6,757 | 7,970 | 1,300 | 1,590 |
| 1935 | 30,922 | 35,199 | 8,223 | 10,549 | 2,300 | 2,760 |
| 1936 | 35,879 | 24,565 | 7,996 | 9,762 | 2,465 | 2,700 |
| 1937† | 49,900 | 54,000 | 6,142 | 7,000 | 2,000 | 2,000 |

| Year | Cigar Leaf | | Large Pipe | | Small Pipe | |
|---|---|---|---|---|---|---|
| | Area in Acres | Production in thousands of pounds | Area in Acres | Production in thousands of pounds | Area in Acres | Production in thousands of pounds |
| 1925 | 4,792 | 4,552 | 3,101 | 3,101 | 1,480 | 814 |
| 1926 | 4,923 | 4,726 | 3,160 | 3,018 | 1,725 | 949 |
| 1927 | 5,786 | 4,900 | 3,120 | 2,496 | 1,272 | 636 |
| 1928 | 5,935 | 5,198 | 3,268 | 2,810 | 1,218 | 609 |
| 1929 | 5,004 | 5,004 | 2,900 | 2,610 | 1,400 | 770 |
| 1930 | 5,200 | 5,430 | 2,030 | 2,030 | 1,220 | 671 |
| 1931 | 4,500 | 4,100 | 1,800 | 1,700 | 1,030 | 540 |
| 1932 | 4,450 | 4,139 | 2,520 | 2,961 | 1,550 | 853 |
| 1933 | 3,950 | 4,029 | 1,725 | 1,854 | 415 | 212 |
| 1934 | 2,950 | 2,310 | 3,420 | 3,800 | 1,805 | 960 |
| 1935 | 2,754 | 3,443 | 1,963 | 2,022 | 708 | 500 |
| 1936 | 4,800 | 4,824 | 3,220 | 3,923 | 605 | 310 |
| 1937† | 4,827 | 5,850 | 1,396 | 1,710 | 860 | 545 |

* Source of data: Dominion Bureau of Statistics, *Monthly Bulletin of Agricultural Statistics* (Ottawa: King's Printer).

† Estimated by the Tobacco Division, Experimental Farms.

TABLE XII.—TOTAL LEAF PRODUCTION IN CANADA, 1925–1937*

| Year | Area in Acres | Production in thousands of pounds |
|---|---|---|
| 1925 | 27,825 | 29,266 |
| 1926 | 33,356 | 28,824 |
| 1927 | 44,028 | 43,917 |
| 1928 | 43,138 | 41,976 |
| 1929 | 36,310 | 29,786 |
| 1930 | 41,304 | 36,717 |
| 1931 | 55,060 | 51,300 |
| 1932 | 54.138 | 54,093 |
| 1933 | 46,898 | 44,904 |
| 1934 | 40,963 | 38,734 |
| 1935 | 46,870 | 54,473 |
| 1936 | 54,965 | 46,084 |
| 1937† | 65,360 | 71,352 |

* Source of data: Dominion Bureau of Statistics, *Monthly Bulletin of Agricultural Statistics* (Ottawa: King's Printer).
† Estimated by the Tobacco Division, Dominion Experimental Farms.

TABLE XIII.—ACREAGE, PRODUCTION AND VALUE OF CANADIAN TOBACCO, BY PROVINCES, 1934—1936*

| Province | Year | Area Planted | Total Production | Average Farm Price | Total Value |
|---|---|---|---|---|---|
| | | Acres | Thousands of pounds | Cents per pound | Thousands of dollars |
| Quebec | 1934 | 8,175 | 7,070 | 11·8 | 832 |
| | 1935 | 5,425 | 5,965 | 10·8 | 641 |
| | 1936 | 8,678 | 9,111 | 9·3 | 845 |
| Ontario | 1934 | 32,329 | 31,400 | 20·2 | 6,338 |
| | 1935 | 41,428 | 48,492 | 20·9 | 10,117 |
| | 1936 | 46,162 | 36,883 | 23·2 | 8,549 |
| British Columbia | 1934 | 459 | 264 | 23·6 | 62 |
| | 1935 | 17 | 16 | 24·5 | 4 |
| | 1936 | 125 | 90 | 29·4 | 27 |
| Canada | 1934 | 40,963 | 38,734 | 18·7 | 7,231 |
| | 1935 | 46,870 | 54,473 | 19·8 | 10,763 |
| | 1936 | 54,965 | 46,084 | 20·4 | 9,420 |

* Dominion Bureau of Statistics, *Monthly Bulletin of Agricultural Statistics*, July, 1937 (Ottawa: King's Printer, 1937), p. 216.

# BIBLIOGRAPHY

The amount of official material—outside of law reports—on the subject of resale price maintenance, appears to be limited in both the United Kingdom and Canada. In the United Kingdom, two government inquiries resulted in reports dealing in part or in whole with the subject, while in Canada, most of the material is related to certain cases arising out of the Combines Act. The amount of non-official material is not extensive in either country, and is particularly scarce in Canada.

In the United States, there is a wealth of published material owing to the activity of the Federal Trade Commission, and the Congressional public hearings held on the many bills introduced into Congress in connection with resale price maintenance and allied subjects. In addition there is a great body of data which arose out of the experience with the National Recovery Administration. Some of this, scattered in published sources, arose out of the codes. etc. It is also a fair assumption that a considerable amount of data on the topic is in memoranda and papers, probably now buried in files.

The Federal Trade Commission has made public two reports of investigations of the topic, which are exceedingly important; in addition, it has through its studies—regional and otherwise—on chain stores, etc. thrown a great deal of incidental light on the practice through general studies in the merchandising field. In addition, a body of material has been developed through the public hearings held on the various bills introduced into congress to deal with trade practices. The United States official material is particularly valuable because it includes not only competent studies in the subject but also because it gives the attitudes of the different merchandising groups toward resale price maintenance. In addition, there has been a great deal of discussion by trade groups, and trade papers so that there is plenty of information available. Also the problem appears to have been given considerable study by economists. For these reasons, United States material must be carefully studied in any serious consideration of resale price maintenance.

The bibliography attached here is fairly extensive, and represents the material covered in preparing this survey; it is not a complete list of all the articles written on the subject in all publications for such a list would be exceedingly long. The citations are given in full so that any reader may see the general sources of material and also examine any source which attracts his interest.

## 1. Books

Ball, J. A., *Canadian Anti-Trust Legislation* (Baltimore: Williams and Wilkins, 1934), pp. 105.

Baxter, D. A., *Resale Price Maintenance in Canada* (Kingston: 1934), pp. 93. Bachelor of Commerce thesis.

*Boston Conference on Distribution* (Boston: Chamber of Commerce, 1937), pp. 92.

Burns, A. R., *The Decline of Competition* (New York: McGraw-Hill, 1937), pp. 619.

Cassel, G., *Theory of Social Economy* (New York: Harcourt, Brace, 1932), pp. 708.

Chamberlin, E. H., *Theory of Monopolistic Competition* (Cambridge, Mass.: Harvard University Press, 1935), pp. 213.

Converse, P. D., *Elements of Marketing* (New York: Prentice-Hall, 1935), pp. 985.

Cox, R., *Competition in the American Tobacco Industry* (New York: Columbia University Press, 1933), pp. 372.

Gaskill, N. B., *Price Control in the Public Interest* (Washington: Bureau of Sales Management Magazine, 1931), pp. 103.

Grether, E. T., *Resale Price Maintenance in Great Britain* (Berkeley: University of California Publications in Economics, Vol. II, No. 3, 1935), pp. 75.

Haring, A., *Retail Price Cutting and its Control by Manufacturers* (New York: Ronald Press, 1935), pp. 247.

Hedges, R. Yorke, *The Law Relating to Restraint of Trade* (London: Pitman, 1932), pp. 121.

Lyon, L. S., *Advertising Allowances* (Washington: Brookings Institution, 1932), pp. 125.

——— *The Economics of Free Deals* (Washington: Brookings Institution, 1933), pp. 228.

Macrosty, H. W., *The Trust Movement in British Industry* (London: Longmans, 1907), pp. 398.

McGarry, E. D., *Mortality in Retail Trade* (Buffalo: University of Buffalo Press, 1930), pp. 198.

Murchison, C. T., *Resale Price Maintenance* (New York: Columbia University, 1918), Studies in History, Economics and Public Law, Vol. LXXXII, No. 2, Whole Number 192, pp. 202.

Neal, Lawrence E., *Retailing and the Public* (London: Allen and Unwin, Limited, 1933), pp. 191.

Persons, W. M., *Consequences of Price Fixing in Competitive Industries* (New York: W. M. Persons, 1933), pp. 73.

Pigou, A. C., *Economics of Welfare* (MacMillan: London, 1932), pp. 837.

Robinson, Joan, *Economics of Imperfect Competition* (London: MacMillan, 1933), pp. 352.

Roos, C. F., *Dynamic Economics; theorctical and statistical studies of demand, production and prices* (London: Williams and Norgate, 1935), pp. 275.

Seligman, E. R. A., and Love, Robert A., *Price Cutting and Price Maintenance; a Study in Economics* (New York and London: Harper and Brothers, 1932), pp. 539.

### 2. Periodicals, Journals and Papers, etc.

*Business Week*

*Canadian Cigar and Tobacco Journal* (Toronto: Consolidated Press)

*Canadian Grocer* (Toronto: MacLean Publishing Co.)

*Consumer's Guide* (Washington: Department of Agriculture) issued every two weeks.

*Gazette* (Montreal)

*Globe and Mail* (Toronto)

*Law and Contemporary Problems* (Durham: Duke University Press)

*New York Times*

*Trade Regulation Review* (New York: R. Wolff)

### 3. Articles, etc.

Alexander, R. S., "Recent Legislation and The Price Problem", *Columbia University Quarterly*, Vol. 39, No. 2 (June, 1937), pp. 99-109.

Business Week, *Resale Price Fixing Under the Fair Trade Laws* (New York: McGraw-Hill, 1937).

*Consumers, Distributors and Producers Unite in Urging Passage of Capper-Kelly Bill to stop Fall Bargain Sales* (American Fair Trade League, Edmond A. Whittier, Secretary-Treasurer, New York).

Chamber of Commerce of the United States of America. *Majority and Minority Reports on Referendum No. 13 on the Report of the Special Committee on Maintenance of Resale Prices* (Washington: 1916), pp. 16.

——— *Maintenance of Resale Prices* (Washington, 1916), pp. 4.

Copeland, M. T., "Some Business and Legal Aspect of Resale Price Maintenance", *Harvard Business Review*, Vol. VI, No. 1 (October, 1927), pp. 114-120.

——— "Standardized Retail Prices" loc. cit., Vol. IV, No. 4 (July, 1926), pp. 393-406.

Doten, C. W., *What Economists Think of the Kelly Resale Price Bill* (Massachusetts Institute of Technology, 1931), pp. 28.

Dunn, C. W., "The Capper-Kelly Bill (s. 240, H. R. 11) to Validate Resale Price Contracts", An Address delivered at the annual meeting of the Associated Grocery Manufacturers of America, Incorporated, held in Atlantic City, N.J., on October 22, 1930.

——— "Resale Price Maintenance", *Yale Law Journal*, May, 1923, pp. 676-703.

Engle, Nathaniel H., "Economic Phases of the Wholesale Market", *American Economic Review*, Vol. 23, No. 1 (June, 1933), pp. 189-99.

Gephart, W. F., "Some Economic and Legal Aspects of Fixed Prices", *Washington University Studies*, Vol. III, Part II, No. 2 (April, 1916), pp. 161-181.

Grether, E. T., "Experience in California with Fair Trade Legislation", *California Law Review*, Vol. 24, No. 4 (September, 1936), pp. 640-700.

——— "Fair Trade Legislation Restricting Price Cutting" *Journal of Marketing*, Vol. 1, No. 4 (April, 1937), pp. 344-59.

——— "Marshall's Role in Price Maintenance in Great Britain", (Note) *Quarterly Journal of Economics*. Vol. 48, No. 2, pp. 348-352.

——— "Resale Price Maintenance and the Consumer", *American Marketing Journal*, Vol. I, No. 4 (April, 1937), pp. 344-59.

——— "Solidarity in the Distributive Trades in Relation to the Control of Price Competition", *Law and Contemporary Problems* (Vol. IV, No. 3), June, 1937, pp. 375-392.

Hamilton, Walton H. et al., "Law and Economics", *American Economic Review Supplement*, Vol. 19, No. 1 (March, 1929), pp. 56-60.

Harno, A. J., "Resale Price Control", *Illinois Law Quarterly*, June, 1922, pp. 264-8.

Hill, W. C., and Scott, J. D., "Competition between Different Types of Retail Outlets in Selling the Same Commodity", *Harvard Business Review*, Vol. XI, No. 4 (July, 1933), pp. 519-527.

Haney, Lewis H., "Price Fixing in a Competitive Industry: A Pioneer Case", *American Economic Review*, Vol. 9, No. 1 (March, 1919), pp. 47-56.

——— "Integration in Marketing", *American Economic Review*, Vol. 10, No. 4 (December, 1920), pp. 534.

Macgregor, D. H., "A Review of Price Cutting and Price Maintenance by E. R. A. Seligman and R. A. Love", *Economic Journal*, Vol. 42, No. 3 (September, 1932), pp. 454-8.

——— "A Review of Resale Price Maintenance in Great Britain by E. T. Grether", *loc. cit.*, Vol. 46, No. 2 (December, 1936), pp. 725-7.

McHenry, L. A., "Price Stabilization Attempts in the Grocery Trade in California", *Journal of Marketing*, Vol. II, No. 2 (October, 1937), pp. 121-8.

Montague, Gilbert H., "Price Fixing, Lawful and Unlawful. An address delivered before the Wisconsin Bar Association", *American Law Review*, July-August, 1928, pp. 505-528.

Murchison, C. T., "Who Should Fix Resale Prices", *Annals of the American Academy of Political and Social Science*, Vol. LXXXII, (March, 1919), pp. 189-200.

Namm, D. H., "Effect of Price Fixing", *Boston Conference on Retail Distribution, 1930.*

Plant, A., "The Maintenance of Resale Prices by Manufacturers", *Review of International Co-operation*, March, 1933, pp. 86-91.
——— "The Report of the Committee on Retail Trade Practices", *Economic Journal* (Vol. 42, No. 1) March, 1932, pp. 142-7.
"Price Maintenance versus Freedom", a debate between A. Damman and B. H. Namm, Radio Station WOR, June 17, 1930.
Putney, B., "Resale Price Maintenance", *Editorial Research Reports*, May, 1937, pp. 327-42.
Puttkamer, E. W., "Resale Price Maintenance", *Illinois Law Review*, December, 1936, pp. 389-94.
Schoenberg, E. H., "The Demand Curve for Cigarettes", *The Journal of Business* of the University of Chicago, Vol. VI, No. 1 (January, 1933), pp. 15-35.
Stevens, W. H. S., "A Comparison of Special Discounts and Allowances in the Grocery, Drug, and Tobacco Trades I," *The Journal of Business* of the University of Chicago, Vol. VII, No. 2 (April, 1934), pp. 95-105.
——— "A Comparison of Special Discounts and Allowances in the Grocery, Drug, and Tobacco Trades II," *The Journal of Business* of the University of Chicago, Vol. VII, No. 3 (July, 1934), pp. 224-236.
———"Resale Price Maintenance as Unfair Competition", *Columbia Law Review*, Vol. XIX, No. 4 (June, 1919), pp. 265-85.
——— "The Clayton Act", *American Economic Review*, Vol. 5, No. 1 (March, 1915), pp. 38-54.
Stone, E., "Price Maintenance", *Industrial and Commercial South Africa*, July, 1929, p. 397.
Taussig, F. W., "Price Maintenance", *American Economic Review Supplement*, Vol. VI, no. 1 (March, 1916), pp. 170-184; discussion, pp. 185-209.
Tosdal, H. R., "Price Maintenance in the Book Trade", *Quarterly Journal of Economics*, Vol. 30, No. 1 (November, 1915), pp. 86-109.
——— "Open Price Associations", *American Economic Review*, Vol. 7, No. 2 (June, 1917), pp. 331-352.
——— "Price Maintenance", *American Economic Review*, Vol. 8, No. 1 (March, 1918), pp. 28-47.
——— "Price Maintenance", *American Economic Review*, Vol. 8, No. 2 (June, 1918, pp. 283-305.
"The Anti-Trust Law of the British Commonwealth of Nations", *Columbia Law Review*, Vol. 32, No. 2 (February, 1932), pp. 324-335.

## 4. Documents

Canada

*Census of Canada* 1931 Vol. X, Part I; Vol. XI, Part II.
Department of Labour, Canada, *Interim Report of Registrar on the Investigation into the Proprietary Articles Trade Association* (Ottawa: King's Printer, 1926).
——— *Report of the Commissioner on the Investigation into the Proprietary Articles Trade Association* (Ottawa: King's Printer, 1927).
Dominion Bureau of Statistics, *Monthly Bulletin of Agricultural Statistics* (Ottawa: King's Printer).
——— *Report on the Tobacco Industries in Canada 1935* (Ottawa: King's Printer, 1937).
——— *Retail Merchandise Trade in Canada 1936* (Ottawa: 1937).
——— *Census of Merchandising and Service Establishments* (Ottawa: 1936) Series 1936, No. 13.
——— *Retail Merchandise Trade in Ontario* (also Maritime Provinces; Quebec; Prairie Provinces; British Columbia) *1936* (Ottawa: 1937).
——— *Wholesale Trade in Canada and the Provinces* (Ottawa: 1937).
*House of Commons Debates* (Canada), 1934, 1935 (Ottawa: King's Printer).
Major, T. G., *Trends in the Canadian Tobacco Industry 1920-1934* (Ottawa: Department of Agriculture, 1936) Publication 487, Farmer's Bulletin 5.
*Report of the Tobacco Inquiry Commission in the Provinces of Ontario and Quebec* (Ottawa: King's Printer, 1928).
Royal Commission on Price Spreads, *Report* (Ottawa: King's Printer, 1935).
Special Committee of the House of Commons on Price Spreads and Mass Buying, *Proceedings and Evidence* (Ottawa: King's Printer, 1934), 3 Volumes.
——— *Documentary Exhibits.*

Great Britain

Board of Trade, *Restraint of Trade*, Report of Committee appointed by the Lord Chancellor and President of the Board of Trade to consider certain trade practices, (London: H. M. Stationery Office, 1931).
*Findings and Decisions of a Committee Appointed to Inquire into the Principle of Fixed Retail Prices* (London: H. M. Stationery Office, Cmd. 662, 1920).
*Milk*, Report of a reorganization Commission for Great Britain, Ministry of Agriculture and Fisheries, Economic Series No. 44 (London: H. M. Stationery Office, 1936), pp. 362.

League of Nations

Cassel, G., *Recent Monopolistic Tendencies in Industry and Trade* (Geneva: League of Nations, Economic and Financial Section, 1927), pp. 45.

New Zealand

*The Proprietary Articles Trade Association*, Report of the Committee of Inquiry together with Minutes of Proceedings of Evidence (Wellington Government Printer, 1927), pp. 164.

UNITED STATES

Federal Trade Commission, *Annual Reports*, 1915-1935 (Washington: Government Printing Office).

——— *Federal Trade Commission Decisions*, Vols. 1, 2, 3, 12, 13, 14, 15 and 17. (Washington: Government Printing Office).

——— *Principal Farm Products—Agricultural Income Inquiry* Vol. 1 (Washington: Government Printing Office, 1937), printed as Senate Document 54, 75th Congress, 1st Session.

——— *Index-Digest of Volumes I, II, and III of Decisions of the Federal Trade Commission with Annotations of Federal Cases* (March 16, 1915, to June 30, 1921), pp. 145-153. (Washington: Government Printing Office, 1922).

——— *The Wholesale Business of Retail Chains* (Washington: Government Printing Office, 1932), printed as Senate Document 29, 72d Congress, 1st Session.

——— *Sources of Chain-Store Merchandise* (Washington: Government Printing Office, 1932), printed as Senate Document 30, 72d Congress, 1st Session.

——— *Chain-Store Leaders and Loss Leaders* (Washington: Government Printing Office, 1933), printed as Senate Document 51, 72d Congress, 1st Session.

——— *Co-operative Drug and Hardware Chains* (Washington: Government Printing Office, 1932), printed as Senate Document 82, 72d Congress, 1st Session.

——— *Chain-Store Advertising* (Washington: Government Printing Office, 1934), printed as Senate Document 84, 73d Congress, 2nd Session.

——— *Chain-Store Price Policies* (Washington: Government Printing Office, 1934), printed as Senate Document 85, 73d Congress, 2nd Session.

——— *Special Discounts and Allowances to Chain and Independent Distributors—Tobacco*, (Washington: Government Printing Office, 1934), 73d Congress, 2nd Session, Senate Document 86.

——— *Invested Capital and Rates of Return of Retail Chains* (Washington: Government Printing Office, 1934), printed as Senate Document 87, 73d Congress, 2nd Session.

——— *Prices and Margins of Chain and Independent Distributors* (Washington: Government Printing Office, 1933), printed as Senate Document 88, 73d Congress, 2nd Session.

——— *Special Discounts and Allowances to Chain and Independent Distributors* (Washington: Government Printing Office, 1934), printed as Senate Document 89, 73d Congress, 2nd Session.

——— *The Chain-Store in the Small Town* (Washington: Government Printing Office, 1934), Senate Document 93, 73d Congress, 2nd Session.

——— *Special Discounts and Allowances to Chain and Independent Distributors—Drug Trade*, (Washington: Government Printing Office, 1934), printed as Senate Document 94, 73d Congress, 2nd Session.

———*Prices and Margins of Chain and Independent Distributors—Drug* (Washington: Government Printing Office, 1934), printed as Senate Document 97, 73d Congress, 2nd Session.

——— *Miscellaneous Financial Results of Retail Chains* (Washington: Government Printing Office, 1934), printed as Senate Document 99, 73d Congress, 2nd Session.

——— *Growth and Development of Chain-Stores* (Washington: Government Printing Office, 1932), printed as Senate Document 100, 72d Congress, 1st Session.

——— *State Distribution of Chain-Stores, 1913-1928* (Washington: Government Printing Office, 1934), printed as Senate Document 130, 73d Congress, 2nd Session.

——— *Chain-Store Private Brands* (Washington: Government Printing Office, 1933), printed as Senate Document 142, 72d Congress, 2nd Session.

——— *Sizes of Stores of Retail Chains* (Washington: Government Printing Office, 1933), printed as Senate Document 156, 72d Congress, 2nd Session.

——— *Gross Profit and Average Sales per Store of Retail Chains* (Washington: Government Printing Office, 1933), printed as Senate Document 178, 72d Congress, 2nd Session.

——— *Principal Farm Products—Agricultural Income Inquiry* Vol. 5, (Washington: Government Printing Office, 1937).

——— *Report of Open-Price Trade Associations* (Washington: Government Printing Office, 1929, 70th Congress, 2nd Session, Senate Document 226.

——— *Report on Resale Price Maintenance*, Part I "General Economic and Legal Aspects", (Washington: Government Printing Office, 1929), also printed as House of Representatives Document 546, 70th Congress, 2nd Session.

——— *Report on Resale Price Maintenance*, Part II "Commercial Aspects and Tendencies", (Washington: Government Printing Office, 1931).

——— *Statutes and Decisions Pertaining to the Federal Trade Commission*, 1914-1929, (Washington: Government Printing Office, 1935).

*Hearings Before the Committee on Interstate Commerce*, United States Senate on s. 97 (Capper-Kelly Fair-Trade Bill), Part I, and Part II (Washington: Government Printing Office, 1932).

*Hearing Before Subcommittee No. 3 of the Committee of the Judiciary*, House of Representatives, (Washington: Government Printing Office, 1937), 75th Congress, 1st Session on H. R. 1611 (Tydings-Miller bill) To Amend the Act Entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" Approved July 2, 1890, January 27, 29, 1937.

*Hearing Before a Subcommittee of The Committee of the Judiciary*, United States Senate, (Washington: Government Printing Office, 1937), 75th Congress, 1st Session on S. 100, A Bill to Amend the Act Entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", Approved July 2, 1890, March 4, 1937.

*Hearing Before a Subcommittee of The Committee of the Judiciary*, United States Senate, 74th Congress, 2nd Session on s. 3822, (Tydings-Miller bill) A Bill to Amend the Act Entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", Approved July 2, 1890, March 13, 1934. (Washington: Government Printing Office).

*Industrial Prices and their Relative Inflexibility* by G. C. Means (Washington: Government Printing Office, 1935), printed as Senate Document 13, 74th Congress, 1st Session.

*Legalization of Contracts for Minimum Resale Prices, Message from the President of the United States* (Washington: Government Printing Office, 1937), printed as Senate Document 58, 75th Congress, 1st Session.

*Report on Resale Price Maintenance* by the Committee of the Judiciary, House of Representatives, (Washington: Government Printing Office, 1937), 75th Congress, 1st Session, House of Representatives, Report No. 382.

*Report on Resale Price Maintenance* by the Committee of the Judiciary, House of Representatives, (Washington: Government Printing Office, 1937), 75th Congress, 1st Session, House of Representatives, Report No. 257.

Work Materials No. 16, Special Study Section, Division of Review, National Recovery Administration, H. S. Kantor, *Resale Price Maintenance Legislation in the United States* (Washington: N. R. A., 1935), pp. 116.

——— No. 57, Special Study Section, Division of Review, National Recovery Administration, M. Merrell, E. T. Grether, and S. S. Kittelle, *Restriction of Retail Price Cutting with emphasis on the Drug Industry* (Washington: N. R. A., 1936), pp. 430.

## Imperial Tobacco Company Papers

### *Folder No. 1*

*Containing:*

1. Copy Memorandum dated 6th November, 1934, by Mr. Lane, Secretary, I. T. Co., *re* "Marketing Canadian Flue-Cured Tobacco".
2. Copy proposed Agreement dated 15th June, 1934, between "Manufacturers", "Growers" and "Packers" *re* "Flue-Cured Tobacco".
   NOTE: This proposed Agreement never actually in effect.
3. Copy of "The Natural Products Marketing Act, 1934" with copy of "The Natural Products Marketing Act Amendment Act, 1935".
4. Copy of "The Canada Gazette" dated 26th October, 1934, setting forth scheme formulated under the "Natural Products Marketing Act" to Regulate the Marketing of Flue-Cured Tobacco produced in Ontario.
5. Copy of "The Canada Gazette" dated 15th August, 1935, setting forth Amendments to the scheme approved by Order in Council dated 26th October, 1934, to Regulate the Marketing of Flue-Cured Tobacco.

### *Folder No. 2*

*Containing:*

1. Copy of letter dated 28th November, 1934, from T. G. Major, Tobacco Marketing Specialist, of the Tobacco Division of the Department of Agriculture, Ottawa, to Mr. C. H. Sclater, Tuckett Tobacco Co., Ltd., suggesting organization of an association amongst the "Burley" Growers in Ontario.
2. Copy of "The Canada Gazette" dated 3rd September, 1935, setting forth the scheme formulated under the Natural Products Marketing Act, 1934, to Regulate the Marketing of Burley Tobacco produced in Ontario.

### *Folder No. 3*

*Containing:*

1. Copy of Letters Patent dated 8th July, 1936, issued by the Province of Ontario to the "Flue-Cured Tobacco Marketing Association of Ontario".
2. Copy of the By-Laws of the "Flue-Cured Tobacco Marketing Association of Ontario", dated 29th July, 1936, which Association replaced the scheme approved by Order-in-Council published in "The Canada Gazette" dated 26th October, 1934, to Regulate the Marketing of Flue-Cured Tobacco produced in Ontario.
3. Copy of the "Regulations" of the "Flue-Cured Tobacco Marketing Association of Ontario", adopted in accordance with the By-Laws of the Association.

### *Folder No. 4*

*Containing:*

1. Copy of Letters Patent dated 8th September, 1936, issued by the Province of Ontario to the "Burley Tobacco Marketing Association of Ontario".
2. Copy of the By-Laws of the "Burley Tobacco Marketing Association of Ontario", dated 21st September, 1936, which Association replaced the scheme approved by Order-in-Council published in "The Canada Gazette" dated 3rd September, 1935, to Regulate the Marketing of Burley Tobacco produced in Ontario.
3. Copy of the "Regulations" of the "Burley Tobacco Marketing Association of Ontario", adopted in accordance with the By-Laws of the Association.

### *Folder No. 5*

*Containing:*

1. Copy of Minutes of Conference of Ontario Local Marketing Boards which took place on 9th September, 1936, re Dominion and Provincial Legislation in connection with Marketing Boards.
2. Copy of Minutes of Conference of Ontario Local Marketing Boards which took place on 23rd November, 1936, re above.

*Folder No. 6*

*Containing:*

1. Memorandum dated 15th May, 1936, outlining services, benefits, etc., extended to employees of Imperial Tobacco Co. of Canada, Ltd., and subsidiary and associated companies.
2. Book copy of Rules of Pension Fund amended to 27th November, 1936.
3. Specimen pamphlet setting forth details of Group Insurance Plan.
4. Extract of Finance & Audit Committee Minute No. 5 of 4th March, 1935, setting forth rules in regard to summer vacations.
5. Copy of Notice regarding holidays with pay for wage earners as set forth in Manufacturing Committee Minutes of 29th March, 1937.
6. Copy of form of letter addressed to employees receiving benefits under Hypothetical Share Scheme. New form of letter as set forth in Supplemental Agreement dated as of 1st April, 1937.
7. Copy of schedule of allowances for continuous disability extending beyond 7 days, as adopted at Operating Committee Meetings held October 15th and 22nd and November 12th, 1931, and including amendment to paragraph 5 as set forth in Finance & Audit Committee Minute No. 4 of 4th May, 1937.

*Folder No. 7*

*Containing:*

Copies of the following newspaper articles and addresses by Mr. Gray Miller, President, Imperial Tobacco Company of Canada, Limited:—

1. Article which appeared in The Gazette, Montreal, 3rd January, 1935, under the caption "1934 Agreement should stabilize whole Tobacco Industry".
2. Address to the shareholders of the Company at annual meeting held in Montreal on Tuesday, 26th March, 1935.
3. Article which appeared in The Gazette, Montreal, 3rd January, 1936, under the caption "Tobacco Industry Developments were epochal in past year".
4. Article which appeared in The Financial Times, Montreal, February 28th, 1936, under the caption "Ontario Tobacco Growers netted record for crop."
5. Article which appeared in The Financial Post, Toronto, February 29th, 1936, under the caption "Farm Problems Industry's also".
6. Printed copy address to the shareholders of the Company at annual meeting held in Montreal on Tuesday, 24th March, 1936.
7. Article which appeared in The Gazette, Montreal, 2nd January, 1937, and The Globe & Mail, Toronto, 5th January, 1937, under the caption "Industry faces duty to society at large".

*Folder No. 8*

*Containing:*

1. Specimen form of "Jobbers' Selling Arrangement", i.e., agreement between the individual jobber and his association.
2. Copy of Rules and Regulations approved by National Meeting of Jobbers' Associations, held in Montreal, September 14th to 18th, 1936.

*Folder No. 9*

*Containing:*

1. Copy memorandum dated 18th September, 1936, setting forth policy of I. T. Sales Co., Ltd., of price maintenance and orderly merchandising of cigarettes, tobacco, snuff, cigars, little cigars and cigarette papers.
2. Copy memorandum dated 8th November, 1935, in regard to premium card schemes, donations, trading boards, packing articles other than tobacco in tobacco packages and tins, and classification of accounts.
3. Summary of Policy of Manufacturers dated 18th September, 1936.
4. Specimen forms "A", "B", "C"—all form no. R2-635.
5. Copies of two letters dated 9th May, 1936, to our wholesale customers.
6. Copy letter dated 30th July, 1935, addressed to Mr. F. A. McGregor, Registrar, Combines Investigation Act, Dept. of Labour, Ottawa, written by Mr. Earle Spafford, Vice-President of the Imperial Tobacco Co. of Canada, Ltd., outlining our objections to a method of distribution contrary to our sales policy.
7. Copy brief (undated) on the evils of price cutting as outlined by the sales department to the executive officers of the Imperial Tobacco Co. of Canada, Ltd.
8. Copy chart dated 8th December, 1934, showing amount of increased business necessary to justify price cutting.
9. Copy memorandum (undated) by Mr. J. M. O'Brien, Sales Manager, Imperial Tobacco Co. of Canada, Ltd., covering price maintenance.
10. Memos. dated 13th May, 1937, showing percentage of profit on Imperial Tobacco Company's products to wholesale and retail trade and showing prices to consumer.

*Folder No. 10*

*Containing:*

Extracts from U.S.A. Journals—

1. Editorial from "The Tobacco Leaf" issue of 19th December, 1936.
2. Article in "The Tobacco Leaf" issue of 2nd January, 1937, entitled "Chicago Market firm during holiday buying rush: Prices held and quality sold well."
3. Article in "United States Tobacco Journal" issue of 9th January, 1937, entitled "Price legislation urged by new head of I.R.T.A. at dinner."
4. Excerpt from address delivered by Grover C. Whalen at the Retail Tobacco Dealers' Association luncheon, 12th June, 1936, and published in "The Tobacco Leaf" issue of 20th June, 1936.
5. Article written by Wm. A. Hollingsworth, President, Retail Tobacco Dealers of America, Inc., published in "The Tobacco Leaf" issue of 26th December, 1936.
6. Article written by Mr. Gray Miller, President, Imperial Tobacco Co. of Canada, Ltd., in the Commercial and Financial Review published by the Montreal Gazette, 2nd January, 1937.
7. Excerpt from article published in "United States Tobacco Journal" issue of 5th December, 1936, entitled "Loss Leader curb urged at Grocers' gathering in New York."
8. Article published in "The Tobacco Leaf" issue of 12th December, 1936, entitled "Judges to the Rescue."
9. Editorial published in "The Tobacco Leaf" issue of 7th November, 1936, entitled "One way to maintain prices."
10. Excerpts from article published in "The Tobacco Leaf" issue of 16th May, 1936, entitled "National Salesmen's Board in three-day convention pledges aid to Trade Improvement Plan."
11. Article published in "The Tobacco Leaf" issue of 16th May, 1936, entitled "Retail group seeks to end price slashes."
12. Editorial published in "The Tobacco Leaf" issue of 15th February, 1936, under the caption "Senator Robinson's Bill."

*Folder No. 11*

*Containing:*

Questions by Mr. Factor of the Royal Commission on Price Spreads and answers by Mr. Earle Spafford, Vice-President, Imperial Tobacco Company of Canada, Limited, 26th April, 1934.

*Folder No. 12*

*Containing:*

1. Tobacco Trade Association Agreement as in effect United Kingdom of Great Britain, Northern Ireland and Isle of Man, between Manufacturers, Wholesalers and Retailers.
2. Report of Committee appointed by the Lord Chancellor and the President of the Board of Trade to consider certain trade practices. Dated 1931.

*Folder No. 13*

*Containing:*

Imperial Tobacco Company Brief submitted to the Price Spreads Committee, Ottawa, in April, 1934.

*Folder No. 14*

*Containing:*

Copy of letter, dated 15th May, 1935, from the President of the Imperial Tobacco Company to the Minister of Trade and Commerce, Ottawa, being in the nature of a commentary on the Report of the Royal Commission on Price Spreads.

*Folder No. 15*

*Containing:*

Copy of Plan for the regulation of the Tobacco Trade, which contemplated the formation of the Tobacco Trade Association of Canada, to be composed of manufacturers, wholesalers and retailers engaged in tobacco business in the Dominion of Canada exclusive of Northwest Territories.